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Arvind Sharma

Problematizing Religious Freedom

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Problematizing Religious Freedom

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Preface

Everyone wants religious freedom but what if people's concepts of religious freedom diverge and they mean different things by it; and not merely different but so different that they cannot be fully reconciled? What then? What if we end up with our own version of the paradox that one person's "freedom fighter" is another person's "terrorist"?

This book is devoted to the exploration of this theme and it is for the reader to judge how far it succeeds in achieving its objective of identifying the differences, as well as the common ground, which might underlie different conceptions of religious freedom.

In the course of writing a book such as this one incurs many intellectual debts. I would particularly like to acknowledge my indebtedness to Professor Kusumita Pedersen and Professor Daniel Cere for their invaluable help in moving the argument forward at many points. The responsibility for the views expressed of course remains mine.

I would also like to thank Juli Gittinger for helping prepare the manuscript for publication.

Montréal, Canada — Arvind Sharma

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Part I

Chapter 1
Introduction

I

Religious freedom, both as a term and as an ideal, is a staple of modern liberal discourse. It is invoked so often in political and legal discourse, and in the media and academia, that it is hardly necessary to document this fact, which is widely acknowledged.[1]

This frequent and obvious invocation of the term often carries with it the unstated assumption that the meaning of the term is also obvious, as referring to something very positive and desirable, whose wholesomeness is in some sense as unquestionable as God (in conservative circles), motherhood, or apple pie. And in a sense it could well be so. But we know that the existence, or at least manifest benevolence, of God could be doubted; that everyone may not have an ideal relationship with one's mother, and even those who may have it may not have it all the time; and that apple pie may contain too many calories for one's own good. In other words, those ideals, whose appeal is obvious, may be self-evident in some sense, but from this it does not follow that they are unproblematical. They are often capable of being problemetized by a critical glance. Such a critical glance does not make the ideal any less so, but hints at the fact that the implementation of the ideal may not be as simple an affair at one might be initially inclined to imagine. Nor does the casting of such a critical glance necessarily imply that one thinks any less of the ideal; in fact it may indicate an even greater commitment to the ideal that that of an armchair idealist, for the critic might be keen to see the ideal realized rather than merely stated and therefore sensitive to the difficulties likely to come in the way of the realization of the ideal.

Thus the key role assigned to religious freedom in the contemporary world carries with it the intellectual and moral obligation that it be examined as closely as possible, especially in terms of the problems which may come in the way of its full realization, the better to discharge the responsibility of securing it.

The problems one has in mind here are not the problems created by those who are simply opposed to religious freedom and therefore arise from opposition to the ideal; they are rather such as are internal, so to say, to the ideal itself, in the sense that they have to do with the contradictions, not immediately perceptible, which may lie with and within the ideal itself, or in its relationship with other ideals.

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II

This book is an attempt to problematize religious freedom in this sense, in a way which may not have been attempted before. To be sure, the concept of religious freedom has already been problematized by other scholars from various angles, and it might be worthwhile to review some of these attempts. For two reasons. Such a review would enable the reader to judge whether this book succeeds in problematizing religious freedom in a way not envisaged before, as it claims to. But this is not the only reason for reviewing previous attempts; it may well turn out to be the case, and I think probably is the case, that these previous attempts at problematizing religious freedom are not unrelated to what is attempted in the book. Such a review of previous attempts will help disclose these relationships more clearly.

The following dimensions of religious freedom have already been identified as problematic. They have been numbered for convenience.

(1) Religion may be considered Janus-faced by nature, when one face of it is identified with its irrational or superstitious aspect and the other with its ethical aspect. In terms of this distinction, according to Winnifred F. Sullivan "the right kind of religion, the approved religion, is always that which is protected, while the wrong kind, whether popular or unpopular, is always restricted or even prohibited."[2] This implies that "religion is not always, in fact, absolutely free, legally speaking."[3]

(2) One could argue that, in this sense, no freedom is absolute; the familiar freedoms of speech, press, association, and the right to vote are also not unconditional: "One may not say anything anywhere. One may not print anything. One may not associate with others for any purpose. Not everyone can vote."[4] Sullivan goes on to argue that "with respect to religion in particular, however, the legal limits of religious freedom are often expressed by rhetorically set boundaries that are strangely unhelpful when it comes to actual cases. Everyone understands, it is said, that religious freedom is not absolute. Religious communities are naturally bound by local fire and police regulations at one end of the spectrum and by the boundaries of civilized behaviour, on the other, that is, the horror of human sacrifice. Yet there is a great deal of religious activity that falls between parking lots and the shedding of blood. And most of it intersects with legal regulation of some sort."[5] Sullivan further argues that "religion is also arguably different from speech, movement, association and the like. The limits come not only from the state or even from the nature of human society. It is the peculiar nature of religion itself to restrict freedom."[6] For to be "religious is, in some sense, to be obedient to a rule outside of oneself and one's government, whether the rule is understood to be established by God, or otherwise."[7]

(3) Religious freedom can possess both a positive and a negative meaning. In its positive sense, curiously, it "must mean something like the freedom not to be free, in ways not already constrained by biology, culture, government, or economic circumstance—the freedom to be bound by claims beyond 'this world' and beyond the state."[8] On the other hand, it could "have a negative

meaning as well, a rejection both of religious foundations of government and of governmental support of religion,"[9] as in the case of France and the U.S.A.

(4) There is the further problem that a modern society, unlike its medieval counterpart, could be divided into those with faith and those without faith. And from such a perspective, "unless 'religion' is to be broadened to include everyone, to give legal protection to religion is to privilege those who understand themselves to be religiously motivated over those who understand themselves to be religiously motivated by equally deeply held secular values. (Such values might be regarded as 'religious,' in some sense, by some scholars and theologians, but it would likely be politically unacceptable to so denominate them.)"[10]

How might such discrimination be justified? "While the argument can be made that all rights depend on the religious understanding of a person, the right to religious freedom makes that argument a necessary part of law. Only then can the resulting discrimination against those who claim to have no religion be justified."[11] This however only takes us into deeper territory. Such religious rights, as is the case with other rights against the state, are "paradoxically dependent on state enforcement."[12] Sullivan argues on the basis of her analysis of the *Warner v. Boca Raton*[13] case, that what may have been sought by the plaintiff "is not the right of 'religion' to reproduce itself but the right of individual, every individual, to life outside the state—the right to live as a self on which many given, as well as chosen, demands are made. Such a right may not be best realized through laws guaranteeing religious freedom but by laws guaranteeing equality."[14]

(5) The concept of religious freedom conceals yet another paradox. Great emphasis is placed in human rights discourse on securing religious freedom, but "curiously, this enthusiasm for religious freedom coexists with a revival of exclusivist religious movements that understand themselves to be the singular path to salvation, that regard religious 'freedom' as the work of the devil, or perhaps of a pernicious and soulless consumerist secularism."[15] Moreover, the right demanded under religious freedom is "often the right to proselytize"—which could be viewed as potentially compromising the religious freedom of others.

(6) There is finally the question of the "tension" between the universal claims and their actual realization in national law schemes. The failure of such actual realization is then attributed to (6A) "the question of effectively guaranteeing rights in a language that is culturally and historically bound to the West"[16] or/and (6B) "the possibility of enforcing justice through law, at all, given its dependence on the violence of the state."[17]

The following additional sources of tension within the concept may also be identified.

(1) Sometimes the discourse seems more concerned with preventing "intolerance and discrimination on grounds of religion and belief",[18] rather than with promoting religious freedom as such.[19] Thus it is pointed out that in general, the "emphasis

on nondiscrimination is so pervasive that one might almost conclude not only that non-discrimination is central to the normative core of freedom of religion or belief, but that the norm in question is only an equality norm. In our view, however, as emphasized by listing nondiscrimination along with the other elements of the normative core, it is vital not to forget the freedom dimension of the right, acknowledging of course that this is a freedom all are equally entitled to claim."[20]

(2) Although religions are seen as engines for the discovery of metaphysical truth, it could be maintained that "at stake in the promotion and protection of religion or belief is not so much the search for one unique and exclusive truth, but rather a search to promote greater respect for the rights of individuals, groups, and communities."[21] This tension is somewhat mitigated by the following observation of Mary Robinson:

> The major religions, while concerned with ultimate questions, frequently present themselves as protectors and promoters of human dignity. They see themselves in particular as defenders of the deprived, the poor, the discriminated against. So their religious freedom is a freedom in society not merely to believe and to worship but also to uphold the cause of the deprived. In these circumstances they must ensure that their own internal practices are not discriminatory on grounds of gender or race or class. They have to learn from the good practice of wider society as well as teach it.[22]

(3) Yet another area of tension may be identified in the following comment: "While the notion that freedom of religion or belief includes the right to 'have or adopt' a religion is undisputed, there has been considerable controversy about whether it includes the right to 'change.'"[23] On this point, the UN Human Rights Committee has observed that "the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including, inter alia, the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."[24]

The scholars who cite this observation however go on to add:

> In our view, this is tantamount to saying that freedom of religion implicitly includes the freedom to change without using the word. Thus, while we understand that there may be disagreement, we believe that freedom of religion or belief in the present-day world necessarily includes the right to change religion or life stance. At the same time, we note that a particular religion or religious community is free to take the position that a person who has changed religion and departed from the faith may be excluded from the religious community and be the subject of religious discipline, but the individual's civil and political rights should not be reduced as a result.[25]

It needs to be recognized that:

> These issues are vital to an understanding of current international religious freedom norms, because they constitute one of the critical areas of disagreement concerning the scope of religious freedom norms: whether religious freedom includes the right to "change [one's] religion or belief," as many in the Christian world believe and as stated in the Universal Declaration of Human Rights and the European and American Conventions, or whether it would constitute impermissible apostasy (at least in the case of conversions from Islam). It may be possible to reach greater consensus on this point once political loyalty and religious affiliation are clearly differentiated, since within contemporary Muslim discourse, new approaches to religious freedom are being discussed that recognize that apostasy is

> primarily a religious issue that triggers religious but not necessarily civil and political sanctions. Such approaches leave choice of religion to the individual where change of religion is not taken as entailing disloyalty to the state.[26]

(4) It may be claimed, on the one hand, that "states may make no derogation from the right to freedom of religion or belief, not even in times of public emergency"[27]; on the other, the following facts also need to be kept in mind:

> The right to freedom of religion or belief was not listed among the nonderogable rights under the ECHR, but all parties to the ECHR have subsequently ratified the ICCPR, and are thereby obligated to recognize the nonderogable character of the right to freedom of religion or belief. ECHR, art. 15 (1) provides that derogations are permissible "under this Convention [only] to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law." Thus, freedom of religion or belief would now appear, at least indirectly, to be a nonderogable right under the ECHR. Of course, the fact that the right to freedom of religion or belief is nonderogable does not mean that limitations may not be imposed on manifestations in that limited range of circumstances where the limitations clauses of international instruments permit.[28]

(5) It is worth noting in the present context that "clearly facilitating human right to freedom of religion or belief is not limited exclusively to providing legal protection.... Furthermore, there is more to freedom of religion or belief than human rights protection. Many countries provide additional, more concrete protections in their constitutional and legal orders."[29]

(6) The religious rights of minorities also do not escape tension for "minorities in this sense include new religious movements, for which freedom of religion or belief must be guaranteed. At the same time, it is necessary to guard against invoking the cloak of religious freedom as an alibi for purposes contrary to human rights."[30]

(7) There is the further point that:

> The right to freedom of religion or belief has the complex task of protecting religion and its potential for good while permitting certain limitations designed to filter out religion's negative hazards. In this sense, the right to freedom of religion or belief addresses both poles of the ambivalence of the sacred. It also bridges both universal and particular: *it constitutes a universal call to respect particular world views and requires particular faiths to endorse universal religious freedom.* But recognition that the right to freedom of religion or belief is designed to address these polarities—the ambivalence of the sacred and the tension of universal and particular—dose not mean that translating it into practice is easy or automatic. Rather, it calls for continual striving to find sensitive ways to facilitate accommodation of religious and cultural differences within a broad framework of interpersonal and intercultural respect.[31]

(8) In relation to women and children, a source of tension emerges as follows: "...while women and children have sometimes suffered most at the hands of religion, in many settings they are also its largest class of devotees, its greatest beneficiaries, and in the case of women, its most ardent defenders."[32]

(9) There is then the crucial issue which turns on the universalizability or otherwise of human rights. How the freedom of religion figures in this debate is recapitulated in the following account:

> In the cultural sphere, the importance of this issue is evident in the tension between particularist claims and the view that human rights are genuinely universal. Some of the most contested problems in this context arise precisely in the field of freedom of religion or belief. These include issues of proselytism, the right to change one's religion, and the role of women as affected by religion. Impasse on these cultural issues helps to explain why the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief has been stalemated as a declaration and has not evolved into a legally binding covenant. Similarly, the 1993 Vienna World Conference on Human Rights did not succeed in crafting a new understanding on the universality or particularity of human rights. It merely acknowledged disagreement through its compromise language, giving continued recognition to the universality of human rights while accepting cultural and religious particularities as well.[33]

(10) Another point of tension is provided by the communitarian dimension of religious freedom. It is well known that "belief communities are a major repository of altruism and moral commitment," but their interests could either coincide with, or diverge from, those of civil society organizations. Thus sometimes the outcome could be one of cooperation between these two forms of organizations as is often said to be the case in Europe. However, "[s]ometimes, alignments with religious communities can be divisive and can entrench conflicting cleavages. A potential remedy in this area is to encourage joint action that brings the efforts of different communities to bear on shared concerns. For example, the 2001 Cantle report on 'Community Cohesion,' commissioned by the Home Office in the United Kingdom, recommended that funds be allocated in such a way as to maximize contact, awareness, and activities between communities."[34]

(11) The question arises:

> is religious freedom relegated to playing an essentially passive role in acknowledging and perhaps sanctifying the relativizing of values that pervades our age? Or can it provide social structures within which deeply divided worldviews can live together? In order for the latter option to be a possibility, it is vital to be able to elucidate public justification(s) of the universally applicable human right to freedom of religion or belief in a religiously, philosophically, and culturally division-prone world. A solution to this problem needs to go beyond being intellectually well-grounded and socially stable. It must facilitate both mutual respect and solidarity across religious and life-stance divides and the unflinching integrity of each normative tradition.[35]

This point has been developed further by Tore Lindholm:

> For Lindholm, the task of philosophy in approaching this challenge is "meta-facilitation" of freedom of religion carried out by assuming the role of a Lockean "under-labourer" tasked with clearing conceptual ground rather than that of the Platonic "philosopher-king." In Lindholm's view, the major contemporary approaches to the dilemmas of religious plurality, difference and conflict—traditional half-hearted toleration, religious relativism or skepticism, salvific pluralism, privatization or marginalization of religious commitment, and exclusion of religion from the public square (whether by strident laicist politics or by a hegemonic secularist culture)—are all found wanting. Lindholm's alternative is to draw on the emerging worldwide public commitment to human dignity as a shared focus for overlapping justification of freedom of religion or belief.[36]

Tore Lindholm then develops a vital distinction between 'overlapping justification' and 'overlapping consensus', as he goes on to say:

> The dynamics of overlapping justification (as opposed to mere overlapping consensus) make it possible for one group to come to understand and trust another group's commitment to freedom of religion or belief and mutual respect, even if the premises of the justification are not totally shared. This in turn makes it possible to achieve "mutual respect with un-compromised integrity."[37]

Other scholars have identified further difficulties with the concept of religious freedom, beyond those which have been discussed earlier. These may also be numbered for convenience.

(1) Religious freedom, as a term, creates the impression that the freedom of all that is associated with religion is equally important as meriting freedom but the fact of the matter is that

> The activities associated with religious pursuits are enormously varied, and it is implausible to suggest that they are all equally important as liberties. Worshipping and preaching are religious activities of the highest importance, while driving and plastering are religious activities of lesser importance, even when done within religious organizations or contexts. It would be a far greater infringement of religious liberty to limit the length of worship services than it would be to limit the duration of bus trips.[38]

(2) In associating freedom with religion, one must not overlook the fact that "the presence of a religious actor, organization, or motivation only ensures importance when their presence connects with the broader considerations that make some liberties very important or valuable."[39] Thus, for instance, the educational and medical institutions run by religious organizations may be more important than some of their other activities. This creates room for suggesting that

> what makes religious activities important as areas of liberty also suggests that religious activities will not uniformly be more important than other kids of activities. The liberty to engage in a certain sort of political assembly may end up having higher priority than the liberty to engage in a particular kind of religious assembly because the political assembly is more valuable to society, is equally or more valuable to its participants, has lower costs and dangers than the religious assembly, and is not as easily replaced by nearly as good alternatives as the religious assembly.[40]

(3) Religious freedom is capable of being calibrated into minimum religious freedom and proper religious freedom. One could also think of maximal and optimal religious freedoms but this one distinction, set up above between minimum and proper religious freedom, should suffice for our purposes. Herewith a description of what a minimum religious freedom regime would look like:

> This minimal right would require that people's personal religious beliefs and private forms of meeting, prayer, and worship not be subjected to coercive intervention. It would protect praying at home or meeting quietly in a nonpublic location for religious discussions or worship. Such a minimal right to religious liberty does not include public expression and proselytizing, public association and assembly, public political action to defend the religion, movement except of a small-scale and quiet sort, economic activities such as building churches or publishing religious books, and public displays of distinctive clothing, practices, or social patterns.[41]

This distinction is not inconsequential because John Rawls has proposed that "liberal democracies refrain from imposing diplomatic and military sanctions on

countries—one he calls ‘decent nonliberal peoples’—whose accommodation of religious diversity goes no further than this.”[42] James W. Nickel feels however that this view should be rejected,

> not just as a view of religious freedom, but because of its overly narrow view of human freedom generally. People have general liberties that are violated when they cannot publicly say what they believe, when they cannot move, associate, and assemble as they please within the bounds of respecting the rights of others, when they cannot use their economic assets to promote common goals, and when they cannot practice nonstandard or unpopular forms of living.[43]

(4) It has been pointed out that religious freedom could be construed as something “bilateral” in the sense of implying its opposite as, for instance, “allowing belief or disbelief and worship or refusal to worship.”[44]

Its bilateral nature could, however, also cause problems, as when those who possess belief might turn on those who don’t; or those who worship might use their freedom to push against those who don’t worship. That this is not just a speculative scenario may be surmised from the possibility that such a “bilateral” view of religion would provide equal room for proselytizing and non-proselytizing religions, which would be like asking the lion to lie down with the lamb. This is possible, but as Woody Allen pointed out, the lamb is going to be very nervous. More seriously, it raises the need for an appreciation of granular detail when it comes to religious freedom. Placing the proselytizing and non-proselytizing religions on the same footing, when one might be perceived as predatory in relation to the other, poses problems, which are resolved in boxing by having light-weight boxers and heavy-weight boxers play in separate categories and not against each other.

(5) There is then the question of religious claims to Exemptions from General Duties on the ground of religious freedom. One needs to recall that

> It is not the case that religious grounds for special exemptions are always more powerful than nonreligious ones. Scientists may have stronger grounds for experimenting with controlled substances than religious believers do. Indigenous peoples seeking access to historically important sites may have stronger grounds for exemptions to wilderness regulations than Christians seeking a place for a sunrise service. People who have survived severe burns to the head and face my have stronger grounds for exemptions to bans on headgear than do Jews or Sikhs.[45]

(6) There is a tension between seeking freedom of religion for *one’s own* religion, and seeking it for the religion of *others*, although the term religious freedom is used to cover both. James Nickel points out:

> Still, a problem with special religious rationales for freedom of religion is that they usually have difficulty in extending that freedom to all religions. Indeed, religious liberty conceived in this way may be restricted to the liberties of the church and of believers—as historically it often was. It is not hard to understand why people demand freedom to practice their own religion. After all, being blocked from practicing one’s religion is frustrating and infuriating. Harder to understand is how people move from demanding tolerance for their own religion to advocating tolerance of all religions and beliefs. When one strongly disapproves of other religions and beliefs, it is hard to foreswear the use of violence and legal coercion.[46]

(7) There is also the issue of substantive versus formal freedom, which seems to apply to all freedoms and religious freedom may be no exception. The United States of America has no established church so its citizens may be said to enjoy a religious freedom more 'complete' in some sense, than the citizens of the U.K. which possesses an established church.[47] Nevertheless, the citizens of the U.K. do enjoy substantive religious freedom by virtually all accounts. As James Nickel notes:

> If a state religion requires people to conform their beliefs to, participate in, or support a particular religion, freedom of religion is violated. Mild forms of establishment of an official religion, however, do not impose requirements of religious membership and participation. I doubt that a country's having an official church alone is an inherent violation of freedom of religion. Great Britain and Brazil are religiously free countries even though they have official churches. They do not require adherence to the beliefs or practices of their official religions.[48]

(8) It is not always recognized that religious freedom possesses both an individual and a communal dimension. It is not only individuals, but groups of individuals following the same religion who might also come within the purview of the concept as a minority, enjoying minority rights. Once this is recognized, religious freedom becomes a more complex concept than it might have been otherwise, because the individual's and the group's rights may come in conflict. The concept of multiculturalism emphasizes a community's right to preserve its religious heritage, but preservation of some of these practices could prove highly problematical, such as the use of Jewish or Islamic law in certain contexts.[49] The issues pertaining to wearing *hijab* among Muslims and *kripan* (dagger) among Sikhs come readily to mind.

(9) To claim religious freedom as a freedom distinct from others, which is claimed on religious grounds, seems to imply that there is something special about religion. Many theorists of freedom of religion, like John Witte, Jr., do argue in that vein.[50] Other theorists of religious freedom however argue that there is nothing special about religious freedom, that it is only a special case of various kinds of freedom, such as political freedom or economic freedom.[51]

III

The implications of the concept of religious freedom are thus far from self-evident, despite the ready acceptance the expression receives as embodying a worthwhile goal. The concept is *emblematic* on the one hand and *problematic* on the other, and some of the ways in which it has been problematized were surveyed in the previous section.

This book stakes the claim that a fundamental point has been overlooked in these earlier attempts at problematizing religion: that one's concept of religious freedom cannot be divorced from one's concept of religion itself. We shall discover in subsequent chapters that this point can and has been challenged, but if we grant it for the moment then this formulation also has an interesting corollary: that the current concept of religious freedom operates with a Western concept of religion which involves

the notion of exclusive religious affiliation, or the view that one may belong to only one religion at a time, and that the contours of the concept of religious freedom change significantly when one operates with what in the book has been identified as an Asian concept of religion, which permits multiple religious affiliation.

It is the aim of this book to problematize the concept of religious freedom from such a perspective. It becomes necessary, in order to accomplish this aim, to explore the concept of religion itself in depth, in keeping with the first formulation, and then to examine the theoretical, historical, and empirical implications of the Western/Asian binary classification in the second formulation.

These two foci provide the organizing principles of the book. In the next chapter, in keeping with the first principle, the word religion will be analyzed as a *lexical* term, to examine the implications such an analysis might have for understanding the word religious freedom in its complexity and fullness. Then the word religion will be analyzed as a *historical* term, in the succeeding chapter, to examine the historical emergence of the term in modern times, as it bears on our understanding of religious freedom. In the chapter which follows, the word religion will be analyzed as a *legal* term in contemporary culture, for the light this might shed on the understanding of religious freedom. The next two chapters, on 'What is Religious Freedom' and 'The Possibility of Religious Freedom' will complete the first part of the book.

The second part will be devoted to placing the concept of religious freedom in the context of World Religions, and Comparative Religion, in order to explore the principles articulated earlier. After three chapters, which deal with the current issues from the perspective of World Religions, and another two which deal with the issue from the standpoint of Comparative Religion, the crucial point of distinction between Western and Asian religions will be delineated, and its consequences examined, from an essentially theoretical perspective. Empirical evidence then will be introduced in relation to the experience of the American Indians to support the basic theses of the book, namely, (1) that the concept of religious freedom cannot be divorced from that of religion and (2) that when a religion, with a different concept of religion and therefore of religious freedom, has to function in a regime with its own regnant concept of religion and religious freedom, then religious freedom of those with a different concept of religion and religious freedom, tends to get compromised.

Notes

1. Sullivan (2005, p. 157): "Among the components of the coming world order, as conceived by the many proponents of the 'rule of law', is the cultural extension and the legal enforcement of human rights. Among these rights, rights that conceive a world order respectful of human dignity, is a guarantee of, in the words of the United Nations, 'freedom of religion and belief'. Written at a time of hope in the capacity of nations to work progressively towards the establishment of laws protecting human rights for all human beings, religious freedom is now vigorously promoted by a new generation of internationalists."; also see Lindholm, Durham and Tahzib-Lie (2004, p. xxxvii): "Freedom of religion or belief, in its current historical

form, is a universally applicable human right codified in international human rights instruments. At the normative level, it has been clear from the beginning of the modern human rights era that freedom of religion or belief is a fundamental right, and indeed one of the preeminent fundamental rights. Emerging from the ashes of the Second World War, the right has been articulated most authoritatively in article 18 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Individuals—all human being everywhere in the world—are the primary holders and beneficiaries of this freedom; states—ideally under continual critical scrutiny by informed citizens—are the primary addressees and thus the primary holders of the correlative obligations. Beyond the religious freedom provisions of the Universal Declaration and the ICCPR, key elaborations and specifications of the human right to freedom of religion or belief are provided by, inter alia, the 1981 Declaration, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the Concluding Document of the Vienna Meeting of Representatives of the Participating States of the CSCE (particularly its principles 16 and 17). The United Human Rights Committee General Comment No. 22 (48) provides normative substance to article 18 of the ICCPR."

2. Sullivan, op. cit., p. 155.
3. Ibid. Also see Oxtoby (1983, p. 71): "What, after all, are the limits of religious freedom? Is there any criterion of substance or of doctrine by which some groups might be branded fraudulent? Is there any criterion of behavior by which some groups might be branded coercive? The problem is, quite simply, that many of the things that are characteristic of the new religious groups—chanting, discipline, self-sacrificing loyalty, active proselytizing—were equally characteristic of the early Christian church in its first missionary outreach. These features still characterize certain movements, particularly Catholic religious orders, in mainline Christendom. If legislatures were to prescribe or courts to describe the acceptable content of religion, it would mark a radical departure from our ideals of freedom and our concept of a pluralistic society. It may be that our Western laws may only restrain overt political rebellion, overt fiscal fraud, or overt coercion. Traditional Christianity may have to live out its golden rule in the presence of new missionary movements, giving them the liberty that one would seek for one's own missionary outreach."
4. Sullivan, op. cit., p. 155.
5. Ibid.
6. Ibid.
7. Ibid., pp. 155–56.
8. Ibid.
9. Ibid.
10. Ibid., p. 157.
11. Ibid., p. 158.
12. Ibid.
13. This case "was brought on behalf of a group of Florida residents who sought to prevent the forced removal of numerous statues, paintings, crosses, Stars of David, and other individually crafted installations that, with the tacit permission of city officials, they had placed on the individual graves of their deceased relatives over the course of 10–15 years" (Ibid., p. 2).
14. Ibid., p. 159. This position has not gone unchallenged, see Lindholm, Durham and Tahzib-Lie, eds., op. cit., p. xl.
15. Sullivan, op. cit., p. 157.
16. Ibid.
17. Ibid.
18. Amor (2004, p. xv).
19. Ibid.
20. Lindholm, Durham and Tahzib-Lie, eds., op. cit., p. xxxviii, note 20: "Antidiscrimination norms, and in particular, norms that bar discrimination on the basis of freedom of religion or belief, pervade the key international instruments. See, e.g., UDHR [Universal Declaration

of Human Rights], art. 2; ICCPR [International Convention on Civil and Political Rights], art. 2(1); ECHR [European Convention on Human Rights], art. 14 ('the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as. . .religion'); ACHR [American Convention on Human Rights], art. 1(1) (States Parties undertake to ensure 'free and full exercise of those rights and freedoms, without any discrimination for reasons of . . . religion'). Moreover, as the UN Human Rights Committee has noted, restrictions on religious freedom 'may not be imposed for discriminatory purposes or applied in a discriminatory manner.' UN Human Rights Committee, General Comment No. 22(48), para. 8. Thus, the nondiscrimination norm is built into the requirement that limitations on religious freedom be 'necessary' in order to be permissible under article 18 of the ICCPR. Similarly, articles 2 and 3 of the 1981 Declaration make it clear that discrimination is inconsistent with freedom of religion or belief."

21. Ibid., xvii.
22. Ibid., xix.
23. Lindholm, Durham and Tahzib-Lie, eds., op. cit., p. xxvii, note 16.
24. Citied, Ibid.
25. Ibid.
26. Ibid., p. xlv.
27. Ibid., p. xxxix.
28. Ibid., note 24. ECHR = European Convention on Human Rights (1950).
29. Ibid., p. xl.
30. Amor, op. cit., p. xlvi.
31. Ibid., p. xxxi. Emphasis supplied.
32. Ibid., p. xliv.
33. Ibid., p. xxviii.
34. Ibid., p. xxix.
35. Ibid., p. xlvii.
36. Ibid. The editors go on to say: "Arguing the case for an expressly pluralist approach, he contends that the challenge is for every life stance (whether religious or secular) to generate and publicize espousals of the human right to freedom of religion or belief by embracing the doctrine of inherent dignity while remaining well-grounded in the heartland of their particular normative traditions. Once our differing, perhaps even incompatible, justificatory platforms are publicly recognized to converge in stable and internally legitimate support of this justificandum, prudentially based toleration will no longer be seen to suffice, and the inadequate halfway houses posed by relativism, skepticism, salvific pluralism, privatization, or exclusivist secularism will no longer be compelling ways out of the dilemmas of religious and life-stance difference."
37. Ibid., p. xlvii.
38. Nickel (2005, p. 954).
39. Ibid., p. 955.
40. Ibid., pp. 955–56.
41. Ibid., pp. 956–57.
42. Ibid., p. 957.
43. Ibid.
44. Ibid.
45. Ibid., p. 959.
46. Ibid., pp. 959–60.
47. Smith (1963, p. 18).
48. Nickel, op. cit., p. 942 note 4.
49. Lindholm, Durham and Tahzib-Lie, eds., op. cit., p. xxvii.
50. Cited, Nickel, op. cit., p. 943 note 5.
51. Ibid., passim.

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Chapter 2
What Is Religion?

I

The expression “religious freedom” is often employed by us with the assumption that its sense is self-evident, that to be religiously free means to have any religion one wants, or none at all. Such confidence, however, assumes that all the so-called religions of the world share the same concept of religion and therefore what religious freedom might entail.

Human rights discourse has so far remained largely innocent of the discipline of study known as Comparative Religion or the History of Religions. This is unfortunate. This field claims the various religions of the world, in the plural, as its proper field of study. It becomes clear, when we turn to the evidence provided by this discipline, that one’s concept of religious freedom cannot be divorced from one’s concept of religion. If, for instance, our definition of religion is monotheistic, then religious freedom would mean the freedom to choose other gods. If, however, our concept of religion is polytheistic, then religious freedom would tend to imply creating room for selecting only one God and rejecting the rest. For if it did not mean that, what new “freedom” is being provided now, for the votary was already “free” to choose from among the various existing gods or to enhance their number if one so wished. It is the theme of this chapter that the concept of religious freedom we formulate cannot be divorced from the concept of religion being entertained by us, and further that the various religions we regularly describe by that name may not possess the same concept of religion. Our discourse of religious freedom will remain seriously impoverished if this fact is not recognized and its consequences absorbed.

The first point one might wish to keep in mind is that the word religion does not possess a definition on which even its scholars are agreed upon, to say nothing of its votaries. A widely used dictionary offers the following entry:

> Religion: 1a. the state of a religious <a nun in her 20th year of --->>: b(1) service and worship of God or the supernatural (2): commitment or devotion to religious faith or observance 2: a personal set or institutionalized system of religious attitudes, beliefs, and practices 3 *archaic*: scrupulous conformity: CONSCIENTIOUSNESS 4: a cause, principle, or system of beliefs held to with ardor and faith[1]

A. Sharma, *Problematizing Religious Freedom*, Studies in Global Justice 9,
DOI 10.1007/978-90-481-8993-9_2,

Buddhism and Confucianism barely make it into the category of "religion" according to such a definition, and it is not easy to imagine what the expression "freedom of religion" could be taken to mean with such a definition. Does it consist of being free to serve and worship the same God or the supernatural in different ways, or to serve different gods and supernaturals? And could this service and worship be offered simultaneously, or must it be offered serially? Would Communism be considered a religion, as a system of belief held with ardour, and would it be treated on par with Christianity or Islam?

The problem persists if one abandons such a lexical approach and adopts a conceptual one, as found in the study of religion. The treatment of the issue becomes nuanced and sophisticated in the study of religion but the category of religion continues to remain problematical. Willard G. Oxtoby (1933–2003) edited two widely used volumes in the study of religion entitled: *World Religions: Eastern Traditions* and *World Religions: Western Traditions*.[2] It would be interesting to see what a scholar of such a broad sweep has to say on this point. At the end of the survey, he remarks:

> We can now sum up these efforts at characterizing religion. We have looked at the evolution of our vocabulary, at standard religions as examples, and at communism and philosophy as critical counter instances. In so doing, we have been circling our prey. No single line of definition seems to be able to trap it, but we can weave a net. Religion is:

A sense of power beyond the human

- apprehended rationally as well as emotionally,
- appreciated corporately as well as individually,
- celebrated ritually and symbolically as well as discursively,
- transmitted as a tradition in conventionalized forms and formulations

that offers people

- an interpretation of experience,
- a view of life and death,
- a guide to conduct, and
- an orientation to meaning and purpose in the world[3]

The key statement from our perspective, so far the word *religion* is concerned, consists of the statement that "no single line of definition seems to be able to trap it, but we can weave a net."[4]

A well-known philosopher of religion, John Hick (born 1922), seems to arrive at a similar conclusion when faced with this problem. He cites several definitions before offering his conclusion and writes:

> What, however, is religion? Many different definitions have been proposed. Some of these are phenomenological, trying to state that which is common to all the acknowledged forms of religion; for example, religion is "human recognition of a superhuman controlling power and especially of a personal God or gods entitled to obedience and worship" (*Concise*

> *Oxford Dictionary*). Others are interpretative. Thus there are psychological definitions—for example, "the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine" (William James). Others are sociological—for example, "a set of beliefs, practices, and institutions which men have evolved in various societies" (Talcott Parsons). Others, again, are naturalistic—for example, "a body of scruples which impede the free exercise of our faculties" (Salomon Reinach), or, more sympathetically, "ethics heightened, enkindled, lit up by feeling" (Matthew Arnold). Yet others are religious definitions of religion—for example, "Religion is the recognition that all things are manifestations of a Power which transcends our knowledge" (Herbert Spencer), or again, "humanity's response to the divine."[5]

He is compelled to conclude, however, that "such definitions are all stipulative: they decide how the term is to be used and impose this in the form of a definition."[6] Then he goes on to add: "Perhaps a more realistic view is that the word 'religion' does not have a single correct meaning but that the many different phenomena subsumed under it are related in the way that the philosopher Ludwig Wittgenstein has characterized as family resemblance."[7] The famous illustration provided by Wittgenstein, which elucidates his concept of family resemblances, is that of what we could call a game. "You cannot define a game as being played for pleasure (for some are played for profit), or as being competitive (for some are solo performances), or as requiring skill (for some depend on chance), or indeed it would seem by any single feature. Yet all these different kinds of game overlap in different ways with yet other kinds, so that the whole ramifying collection hangs together in a complex network of similarities and differences which Wittgenstein likened to the resemblances and differences appearing within a family."

John Hick then proceeds to explain the term religion, by taking the cue from Wittgenstein, as follows:

> Perhaps there is no one characteristic of everything that can be called a religion but rather a set of "family resemblances." In much religion there is the worship of a God or gods; but in Theravada Buddhism, for example, there is not. Again, religion often makes for social cohesion; yet in some strands it is aptly characterized as "what man does with his solitariness" (A.N. Whitehead). Again, religion often makes for the inner harmony of the individual; yet some of the greatest religious innovators seemed to their contemporaries to be unbalanced and even insane. The family resemblances model allows for such differences. It also allows us to acknowledge the similarities as well as the differences between more standard examples of religion and such secular faiths as Marxism. Marxism has its eschatological ideal of the ultimate classless society, its doctrine of predestination through historical necessity, its scriptures, prophets, saints, and martyrs. Thus we can see it as sharing some of the features of the family of religions while lacking other and probably more central ones. But whether a movement is religious is not an all-or-nothing matter but a question of degree within a widely spreading network of resemblances and differences.[8]

The conclusions reached by a comparative religionist and a philosopher of religion are also supported a historian of ideas. Daniel Dubuisson furnishes an account of how the term religion came to be constructed in the West.[9] Dubuisson fills six pages with remarks on religion by major thinkers, only to conclude that these do not provide adequate criteria for defining religion. He writes:

An Absence of Criteria

> If the search for a rigorous, coherent definition of religion meets with powerful intellectual prejudices stemming from the Christian tradition and, in a certain way, from the banality of all those that have been proposed for more than a century, one could think that this failure resulted from several factors, foremost among which we see the absence of any systematic thought aimed at determining satisfactory analytical criteria capable of winning unanimity among scholars, simply (and even if this seems surprising) because we have witnessed no true effort aimed at defining what should be the status and function of these criteria. However, for such a sensitive question, it would have been, and still remains, indispensable to ask (beyond the illusory comfort offered by superficial comparisons limited to summary statements or misleading schematizations), what kinds of criteria should have been chosen for this purpose. But the determination of such criteria presupposes that we have defined an exact protocol for research, which then would have reviewed and carefully examined the different options available (conventional, heuristic, empirical, logicistic, deductive, and others), that would have distinguished different possible levels of intervention (factual, structural, functional, symbolic, formal, transcendental, etc.), that would have tried to excise or at least call attention to its most operative presuppositions, and that finally would have specified where the epistemological conditions and limitations for their use are situated.[10]

He goes on to observe:

> But instead of this, what have we seen and do we still observe today? In a general way, that people have casually chosen the Western Christian model as reference, reduced to what is considered its central framework in order to make of it a kind of ideal, intangible norm. What do we most often find in this doxa? Essentially, three things, of which one, the first, is already familiar: (1) the affirmation of the existence of God and of the living link that unites the mortal creature to him; (2) a Church or priestly organization; and lastly (3) sacraments and ceremonies, that is, according to the nomenclature proposed by Hubert and Mauss, beliefs, institutions, and practices. We may note in passing that this tripartite assemblage is to be found almost everywhere (what class of social phenomena does not entail the concomitant action of beliefs, institutions, and practices?), and that as a result it is difficult to recognize any religious specificity here.[11]

He then provides a telling example to illustrate the existing state of affairs—by suggesting that we “ask what we would think of a learned Hindu pundit who eruditely questioned whether the public ceremony celebrated in France on July 14 [or on July 4 in the United States] could be called a *yajña*—a matter of some significance for anyone trying to define the essence of *yajña* (usually translated as ‘sacrifice’), and who might suppose that it was to be found, albeit in a less complete or, frankly primitive form among all peoples.”[12] Then he proceeds to ask sharply: “Would we for all that admit the universality of the term and, with it, the profoundly yajñic character of humanity or human cultures? How would we feel about this Indian ambition to form a yajñic anthropology conceived in the image of, and as a rival to, our religious anthropology? Mightn’t we call it a caricature of a comparison, and indecent or even sacrilegious? But is what Western scholars have been doing for centuries with the term ‘religious’—most of them without the least embarrassment—any less ridiculous or pretentious?”[13]

He then raises a point which will continue to haunt us through much of the book.

> Thus the Aśvamedha [horse sacrifice] and Rājasūya [coronation sacrifice], those great royal rituals of Vedic India, are classified among the most spectacular liturgical celebrations in Vedic religion. But how are they more essentially religious than our ceremonies of July 14 and November 11 [Armistice Day], even when the latter are accompanied by a memorial service? For Vedic thought, one of the essential oppositions was between public rites and private rites (between rites that did or did not include the recitation by Brahmans of texts drawn from Śruti) and not between religious and political rites, since the latter two general categories do not exist as such, even implicitly. In the eyes of the ancient Indians, the totality of elements and events of the world depends in any case on an impersonal and probably uncreated cosmic order (*ṛta* or dharma). On what grounds could we assert that some of them were more religious than others? And what definition would then have to be given to this qualifier?[14]

But could the case not still be accommodated within a Western framework? Dubuisson tackles this question as follows:

> But, in a way that is to some degree itself dictated by the implicit reference to the Christian model, the Vedic example offered above (gods/priesthood/solemn rites) constitutes a case relatively favorable to the Western thesis. In reality, if, beside the gods, we do not forget to cite all the varieties of demons, of supernatural powers and beings, to call attention, with regard to the gods themselves, to their differing ontologies; if, further, we do not neglect to ascribe to the Brahmans the totality of their functions and attributions (poets, jurists, pedagogues, counselors, etc.) and, lastly, if we do not forget that the great, solemn Vedic rites (against which no doubt, innumerable magic practices competed) are more concerned with the permanence of the cosmos and of society than with the obligation to devote an exclusive personal cult to this or that god—then, the tripartite block (gods/priesthood/ public rites) established in the Western pattern would be bound either to shatter or be substantially distorted.[15]

An Indian scholar of religion, S.N. Balagangadhara, also seems to endorse this view.[16]

When we look at our times as distinguished from the previous centuries, such a search for criteria has only become more acute. If, for an earlier generation, it was the Christian model of religious life which posed problems of definition, then in our times it is the pluralist religious life style which does the same. This issue was thrown into sharp relief by the Jonestown tragedy in 1978, when 914 followers of Jim Jones (1931–1978) participated in a mass suicide. New religious movements thus provide fresh motivation for the search for criteria. Some of these are more specific, as when it is argued that if, on the one hand, "modern pluralistic society proclaims the freedom to preach or follow religion without state intervention, fairness demands that such freedom be extended to all"; on the other hand, "my freedom to practice a religion or to invite others to follow it is limited by the freedom of others to know openly what I am offering and to refuse it if they so choose. Religious groups forfeit their right to acceptance in a pluralistic society if they engage in illegal activities (such as narcotics abuse, firearms abuse or tax fraud) or maintain themselves through psychological or physical coercion."[17] It may be noted at a broader level that:

> In the last decades of the twentieth century, some of the new religions achieved a degree of institutional maturity and public acceptance. Their function as religions was more likely to be seen as compatible with mainstream denominations. One criterion for acceptance that

> was conducive to this in some circles was theological: that one's own tradition mandated love and acceptance of one's neighbour, including that neighbour's identity as adherent of a different tradition. A secular criterion for acceptance was the value of harmony and benefit in society. New groups could be hailed as helping their members to cope with their lives, and making them good citizens in a pluralistic society.
>
> Religions are not all the same, but many are humanly acceptable. The test of acceptability is whether they in fact bring benefit to human beings. The words of Jesus in the Sermon on the Mount "you shall know them by their fruits" (*Matthew* 7:16) are an appropriate test. Various religions have on occasion lived up to their ideals and passed it. Those same religions on other occasions have fallen short of their ideals and have failed. Humankind is the common denominator of the religions, for they all in one way or another address the human predicament. And human benefit is a fair test of the performance of each.[18]

II

It might be tempting to dismiss the problem of defining religion as a merely theoretical issue. However, it has concrete implications for how religious freedom manifests itself.

One might argue, for instance, that one way to remedy the vagueness of the word religion might be to be legally specific about it. But when countries have tried to do so, it has led to problems. Thus China's definition is said to be so strict that "even traditional religions do not fit within the set of religious organizations recognized by the state."[19] It thus excludes "Jehovah's Witnesses, Ba'hai, the Church of Jesus Christ of Latter-Day Saints (Mormons), Russian Orthodoxy and even Judaism."[20] It has been proposed that "this reluctance to expand the universe of recognized religions stems in part from a fear of opening up a 'pandora's box' that would make it difficult for the government to deny registration or recognition of any religious group."[21] In Belarus, the definition of religion mentions "religious associations, monasteries, religious brotherhoods and sisterhoods, religious missions, and spiritual educational institutions."[22] It has been pointed out that "this implies a structured organization of only specific types, while there are other kinds of religious organizations that are not even mentioned in the provision."[23] The definition of religion in Estonia is similarly closely connected with religious organizations, "with rigid rules that imply structured hierarchical organizations."[24] A draft law in Hungary in 2000 moved in a different direction, by identifying legitimate religions in terms of "a structured *set* of beliefs," further requiring that these "focus on reality as a whole."[25] This could have the consequence of preventing registration and thus undermining the "legitimacy of nonstructured religious associations that focus their teaching on the afterlife or a different kind of reality."[26] In Armenia, only such an entity could be recognized as religion according to law as "is based on any historically canonized holy scriptures," whose doctrine "forms part of the international contemporary religious-ecclesiastical communities," and which is "free from materialism and is intended for purely spiritual goals."[27] In Peru, the problem pertains not to the definition of religion but religious organization, involving "unduly narrow interpretations of the terms 'convents' and 'monasteries.' "[28] Moreover, it is also

worth noting that "definitional problems can extend to other types of terminology which have a particular meaning in one religion, but rather different meanings (or counterparts) in other religions."[29]

A second area where the term religion sometimes poses difficulties is in the context of religious sects. According to one observer, "It has become all too common in recent years to stigmatize some groups by referring to them as sects. Intentional use of such terminology with the intention to disparage is itself a violation of religious freedom norms. Any claim that 'sects' are not 'religious' for purposes of asserting religious freedom claims adds injury to insult."[30]

The general point which seems to emerge from a review of the above material is the realization that states tends to be comfortable with certain definitions of religion. It should be obvious however that

> Whatever else religious freedom means, it is not limited to protecting "traditional religions" with which a state is comfortable. It clearly extends to smaller groups, to newly established groups, to dissenting groups within a denomination, to schismatic groups, to extremist or fundamentalist groups—in short, all kinds of groups that test our ability to show genuine tolerance and respect.[31]

Another point has been urged in this context, namely, that

> . . .what counts as religion or religious is inherently vague, and the variation in the range of phenomena potentially described by these terms is so vast. But it is also in part because insensitive definitions by the state may themselves be inherently discriminatory and may have the practical effect of imposing limitations on beliefs that individuals and groups sincerely believe to be religious. *While these definitional problems may be ultimately insolvable at the level of theory, in the overwhelming majority of cases they are relatively easy to resolve in fact*.[32]

In the attempt of such a resolution, some have recommended the approach adopted by the UN Human Rights Committee in its General Comment No. 22 in 1993, the second paragraph of which runs as follows:

> Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.[33]

According to those who endorse the perspective enshrined in it, this "provision recognizes the incredible diversity of religious phenomena that must be taken into account in protecting freedom of religion or belief. Religious association laws need to be drafted with the reality of this virtually boundless pluralism in mind."[34]

However, the need to guard the definition from random subjectivity may have be taken into account as the religious world becomes more pluralistic. Willard Oxtoby anticipated this problem when he wrote:

> The modern Protestant theologian Paul Tillich (1886–1965) gained much attention for his characterization of religion as "ultimate concern," concern for what ultimately matters most

> in this world, this life, and beyond. His view has sometimes been distorted to mean that one's highest priority—whatever that is, even golf—is religion, but to Tillich some concerns are validly ultimate and are religion, while other more mundane ones are not. Contrasted with golf, religion has more to do with the overall meaning of the universe and of life in it.[35]

It is worth noting that even if a maximalist definition of religion is accepted, it does not follow that everything which falls in the category of religion is tolerated. Human rights discourse has been is quite clear on this point:

> Note that inclusion of a group in the category of religion does not automatically lead to the conclusion that every religious claim it asserts will automatically be vindicated. Extreme claims that threaten others with imminent and palpable injury will clearly justify state intervention. More generally, religious claims may be subjected to limitations in the narrowly described situations articulated in the relevant limitation clauses. But what occurs in such situations is justifiable state intervention that overrides a religious freedom claim, not state regulation of nonreligious conduct.[36]

III

The problem of defining religion, however, has major implications of religious freedom. This is illustrated by the *Warner v. Boca Raton* case, sometimes referred to as the *Warner* case. In this case some Florida residents, who had placed objects such as "statues, plantings, crosses, Stars of David, and other individually crafted installations" on the graves of the deceased over the course of several years, were asked to remove them as this was perceived to be in violation of the law.[37] It is significant that the "city's strategy was to show that the plaintiff's practices were simply choices, consumer choices, decorating choices if you like, not religiously mandated behaviour. The city offered tests by which the judge could rationalize a conclusion *that what plaintiffs were doing was not really religious or was not really religious in an important way*."[38]

When we claim to offer religious freedom we decide to treat religious activity in a special way, in the sense that we allow a person to perform certain acts which would not have been permitted but for the fact that the activity is accepted as religious. Otherwise there would be no need for "freedom of religion" and all that is covered by it could be assumed under "freedom of expression." When a claim is based on the contention that the plaintiff's action is based on "religion" then the issue arises: "Were they religion of sufficient stature to demand exemption from laws which applied to everyone else?"[39] The logical consequence of this is that if we cannot distinguish religious activity from ordinary activity, then should laws pertaining specially to religion exist at all?[40] It is this difficulty in defining religion in a pluralist society which has led some scholars to propose that

> Freedom and equality are better realized, and liberty better defended, if religion, *qua* religion, is not made an object of specific legal protection. The legal defense of human dignity and of life beyond the state must be honoured in other ways.[41]

The basic insight of this chapter may be articulated in terms of a statement by Balagangadhara that "what makes Christianity a religion is not what makes Hinduism into a religion, so that what constitutes religious freedom for one may not be what it means for the other."[42]

Notes

1. Merriam-Webster (2002, p. 985).
2. Oxtoby (2002a [1996], 2002b [1996]).
3. Oxtoby (2002a [1996], p. 454).
4. Ibid.
5. Hick (1990, p. 2).
6. Ibid.
7. Ibid.
8. Ibid., p. 3.
9. Dubuisson (2003, p. 63).
10. Ibid., pp. 63–4.
11. Ibid., p. 64.
12. Ibid.
13. Ibid., p. 64.
14. Ibid., p. 65.
15. Ibid., p. 65.
16. Balagangadhara (1994, pp. 246–47).
17. Oxtoby (2002b [1996], p. 506).
18. Ibid., p. 507.
19. Durham (2004, p. 353).
20. Ibid., note 157.
21. Ibid.
22. Cited, ibid., p. 353.
23. Ibid.
24. Ibid., p. 354.
25. Cited, ibid., p. 354.
26. Ibid.
27. Cited, ibid.
28. Ibid.
29. Ibid.
30. Ibid.
31. Durham, ibid (2004, p. 353).
32. Ibid., pp. 352–53, emphasis added.
33. Cited, ibid., p. 353.
34. Ibid. Contrast this with the following situation as described by Sullivan (2005, p. 107): "The Florida statute (reproduced in Appendix A) seems to call for a two-step legal inquiry. First, a court must determine whether a particular claimant's action was an 'exercise of religion.' (If it was not, presumably no further inquiry would be required.) An 'exercise of religion' is defined by the Florida statute as 'an act or refusal to act that is *substantially motivated* by a religious belief, *whether or not* the religious exercise is compulsory or central to a larger system of religious belief [emphasis added].' The definition is expansive and seems deliberately to shift the focus of the trier-of-fact toward the motivation of the religious actor and away from the location of a particular activity within 'a larger system of religious belief.' The definitions section requires only that an action, in order to qualify as an 'exercise of religion,' must be 'substantially motivated by a religious belief.' Having established that the activity

in question is an 'exercise of religion,' within the meaning of the statute, a court must then determine whether the government 'substantially burdened' that exercise of religion. There are, thus, two layers of substantiality imposed by the statute. The religious actor must be *substantially* motivated in his exercise of religion, and that exercise of religion must itself also be *substantially* burdened—an odd, almost Aristotelian, insistence on *substance*, as if the legislators feared that there was something here that could get away from them."

35. Oxtoby (2002a [1996], p. 454).
36. Durham, Jr., op. cit., p. 355.
37. Sullivan, op. cit., p. 2.
38. Ibid., p. 103, emphasis added.
39. Ibid., p. 107.
40. Ibid.
41. Ibid., p. 138. For an earlier discussion on the subject see Gunn (2003, pp. 189–215).
42. Cited by Nadkarni (2006, p. 69).

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Chapter 3
What Is Religion: The Historical Context

The irreducible ambiguity of the word religion is not the only element which has a bearing on how religious freedom might be understood in human rights discourse. Another dimension of the issue is equally important. It has to do with the manner in which religions outside the West have come to be shaped by the Western understanding of the term. Such a Western understanding is deeply influenced by the Christian model of what makes a religion a religion. The views of two scholars on this point deserve special mention.

The first is Wilfred Cantwell Smith (1916–2000), who has subjected the word religion to a through analysis in one of his works.[1] He concludes that the term religion has been employed in "four quite distinct senses,"[2] as follows:

(1) It is used in the sense of personal piety, as in the phrase "he is more religious than he was 10 years ago."[3]
(2) and (3) It is used in the sense of "an overt system, whether of beliefs, practices, values, or whatever. Such a system has an extension in time, some relation to an area, and is related to a particular community; and it is specific."[4]

    This is its common understanding, according to which we describe say Christianity or Islam as religions. It is, however, capable of being used in two distinct senses in this way: (1) the system as an ideal and (2) the system as an empirical phenomenon. Hence the need to identify two senses here. "Thus there are two Christianities: 'true Christianity' on the one hand, the ideal, which the theologian tries to formulate but which he knows transcends him; and, on the other hand, the Christianity of history, which the sociologist or other observer notes as a human, sometimes all too human, complex."[5]
(4) Religion in the generic sense: "In so far as it is historical, it is as complex as all the religions taken together. In so far as it is personal, it is as diverse as the men whose piety it synthesizes."[6]

Smith concludes his discussion of the four senses with the following lapidary utterance: "The first sense discriminates religion in a man's life from indifference (or rebellion). The second and the third (possibly intermingled) discriminate one religion from another. The fourth discriminates religion from other aspects of human life, such as art or economics."[7]

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It is clear that the word is primarily understood in the second and third senses in human rights discourse and that the provision of religious freedom thus consists of being free to choose among religions. The other senses, however, also come into play. Thus the freedom of religion and belief includes the freedom not to have a religion and thus points to the first sense,[8] while it is conceivable that, in a hypersecular society, some citizens might stand up for freedom of religion in the fourth sense, taking a stand against its reductive subsumption into another area of life. Paradoxically, freedom of religion and belief implies both the freedom to take a stand against it or to stand for it.

This part of Smith's thought thus helps clarify the concept of religious freedom but another aspect of it problematises it. This in fact happens quite dramatically when he writes: "My own suggestion is that the word [religion], and the concepts should be dropped—at least in all but the first personalist sense."[9] He explains his position at length as follows:

> The study of man's religious life has in the past been inadequate in so far as its concept of religion has neglected either the mundane or the transcendent element in what it has studied, and has been confused in so far as its concept has attempted to embrace both. I ask whether these studies may not proceed more satisfactorily in future if, putting aside the concept of "religion" or "the religions" to describe the two, we elect to work rather with two separate concepts.
>
> I propose to call these "cumulative traditions," on the one hand, and "faith," on the other. The link between the two is the living person.
>
> By "faith" I mean personal faith. I shall endeavour to elucidate this in our next chapter. For the moment let it stand for an inner religious experience or involvement of a particular person; the impingement on him of the transcendent, putative or real. By "cumulative tradition" I mean the entire mass of overt objective data that constitute the historical deposit, as it were, of the past religious life of the community in question: temples, scriptures, theological systems, dance patterns, legal and other social institutions, conventions, moral codes, myths, and so on: anything that can be and is transmitted from one person, one generation, to another, and that an historian can observe.[10]

This radical suggestion may be discussed on its own merits but it as such does not problematise the issue of religious freedom. What problematises it are the grounds on which Smith is led to make these suggestions.[11] This point emerges clearly in the following summary statement of his position offered by John Hick:

> In his important book *The Meaning and End of Religion*, Wilfred Cantwell Smith challenges the familiar concept of "a religion," upon which much of the traditional problem of conflicting religious truth claims rests. He emphasizes that what we call a religion—an empirical entity that can be traced historically and mapped geographically—is a human phenomenon. Christianity, Hinduism, Judaism, Buddhism, Islam, and so on are human creations whose history is part of the wider history of human culture. Cantwell Smith traces the development of the concept of a religion as a clear and bounded historical phenomenon and shows that the notion, far from being universal and self-evident, is a distinctively western invention which has been exported to the rest of the world. "It is," he says, summarizing the outcome of his detailed historical argument, "a surprisingly modern aberration for anyone to think that Christianity is true or that Islam is—since the Enlightenment, basically, when Europe began to postulate religions as intellectualistic systems, patterns of doctrine, so that they could for the first time be labeled 'Christianity' and 'Buddhism,' and could be called true

> or false." The names by which we know the various "religions" today were in fact (with the exception of "Islam") invented in the eighteenth century, and before they were imposed by the influence of the West upon the peoples of the world no one had thought of himself or herself as belonging to one of a set of competing systems of belief concerning which it is possible to ask, "Which of these systems is the true one?" *This notion of religions as mutually exclusive entities with their own characteristics and histories—although it now tends to operate as a habitual category of our thinking—may well be an example of the illicit reification*, the turning of good adjectives into bad substantives, to which the western mind is prone and against which contemporary philosophy has warned us. In this case a powerful but distorting conceptuality has helped to create phenomena answering to it, namely the religions of the world seeing themselves and each other as rival ideological communities.[12]

The point is this. It is specially when religions are postulated as mutually exclusive entitles that the issue of conversion and proselytization gains in salience. If such postulation is largely the consequence of a Western perception, then Western human rights discourse seems to offer a solution to a problem which the Western nature of religious discourse has itself created in the first place!

Smith analyzed the implications of the Enlightenment for religious discourse in the West. It contributed to a reification of the various religious traditions as exclusive entities. Willard Oxtoby analyzes the role of Christianity itself as supplying a model of religion, which had similar implications. He writes:

> From the 1490s onward, Europe's horizons were vastly enlarged through voyages of discovery and trade. The information gained was rapidly and widely disseminated in Europe, thanks to the introduction of printing. Before long, there were numerous books that catalogued the ceremonies and customs of Asia and the Western hemisphere. Eventually, too, the teachings of China and India were described as models of political and metaphysical wisdom, often with an eye to reforming this or that position in Europe.
>
> When the Christian world of the West viewed other traditions, it sought to define them in terms parallel to the way it understood Christianity. The Christian historical self-understanding imposed three of its own predilections on what it described.[13]

These three predilections are its predilections towards creedal formulation, differentiation of sacred and secular, and exclusive membership. Oxtoby elaborates the first point as follows:

> Among these was Christianity's emphasis on creeds, its desire to pin things down as affirmations of belief. One identified oneself as a Christian by declaring such-and-such about God, Jesus, or the world. So one expected the adherent of another tradition to have a corresponding set of creedal beliefs, which it would be the observer's task to formulate. Some of Asia's great traditions, such as Buddhism, do present substantial, sophisticated, and challenging doctrines, but in the case of Shinto, for instance, statements of doctrine are more of a collector's item.[14]

The process of differentiation of the spheres of the sacred and the secular is encapsulated by Oxtoby as follows:

> A second Christian predilection is to impose on all religion Christianity's centuries-old institutional distinction between the sacred and the secular. Christianity started with three centuries of minority status before receiving state patronage, and consequently grew quite accustomed to the idea that some things belong to God and other things to Caesar. Even the medieval Latin Church, at the height of its influence and in its struggles over authority with

> princes, took conspicuous note of the principle. One of the chief characteristics of modernity in the Euro-American West is a secularity that puts both intellectual and institutional limits on the sphere allocated to religion.[15]

This distinction, however, complicates the study of other religions. For "to identify religion in contrast with what one regards as 'secular' may be useful for understanding classical Christianity, but it has not proven helpful for understanding classical Islam. Islam did not share Christianity's formative experience of 300 years as a minority. Islam was launched in Arabia as a total value system for society, including its laws and commerce and even warfare. In the Islamic case, virtually any aspect of culture and civilization is relevant to religion."[16]

This predilection also causes difficulties when it comes to applying it to Asian religions, as for instance, Confucianism.

> The sacred-secular contrast is also unhelpful, but for quite different reasons, when we consider Chinese thought of 2,500 years ago. The principal contribution of Confucius and his early successors was a humane social ethic: what in the West we might consider moral philosophy. Admittedly, Confucius made rhetorical references to Heaven, but he seems to have been rather agnostic about much of traditional religion and ritual in his day.[17]

The third predilection—towards exclusive membership—which Christianity shares with the other Abrahamic religions—is no less important than the other two. Oxtoby writes:

> A third Christian expectation concerning "religion" is the notion of exclusive membership. That God should demand loyalty and tolerate no rivals is part of the faith of Judaism and was passed on to Christianity and Islam. Each of these three has been at pains to demarcate the boundaries of its community. However, a notion that if you follow one tradition, you cannot also follow another is not one that has always applied across southern and eastern Asia.[18]

Oxtoby goes on to point out how the counterexamples of Sikhism and Japan problematise the point. He writes in relation to Sikhism:

> For understanding the Sikh tradition, this matter is doubly relevant. The early Sikhs were disciples of a teacher who saw God as transcending all forms, including the boundaries of human communities of worshippers—limits made prominent by the coming of Islam, a boundaried religion, to India. Four centuries after their founding teacher, however, some Sikh leaders were seeking strenuously to define their community in contrast to a Hindu population with whom they had a great deal in common. And five centuries after that teacher, misery persists as Sikhs contend that full recognition of that identity has been denied them.[19]

It is however when Oxtoby invokes the example of Japan[20] that the serious nature of the issue is fully exposed. His own observation is brief to the point of sounding cryptic: "Do boundaries help us to understand Japan? Studies report that only a small percentage of its population consider themselves as belonging to any religion; yet when surveys ask whether one follows Buddhist or Shinto or other rituals and practices, the positive responses add up to more people than there are in the country."[21]

The point to be reckoned with then is that the use of the category "religion" is not neutral; it imports certain associations it possesses in Western Christian civilization into our understanding of it and concept of *religious freedom* as understood in human rights discourse is framed by this specificity.

Willard Oxtoby may be described as John the Baptist for advancing such a perspective. In the following excerpt, he first identifies the difficulty in defining religion in a uniformly acceptable way, and then our tendency to extrapolate from it what we consider to be religious.

> A strict definition of "religion" is not easy, for there are about as many definitions as there are scholars in the field. What we commonly call "religions" have few, if any, universally shared specific characteristics. Not belief in God, for there are forms of early Buddhism which lack this. Not mythology, for there is hardly any narrative myth in Islam. Not even ritual, unless perhaps the very holding of a silent Quaker meeting is itself a ritual act. And yet, some sense of power beyond humankind, expressed symbolically as well as literally, emotionally as well as rationally, actively as well as speculatively, corporately as well as individually, may well characterize the traditions we wish to include without also gathering in such present-day commitments as Marxism or secular humanist philosophy.[22]

He goes on to say:

> The plain fact is that our concept "religion" starts with the example of the tradition we know, and describes others in terms of it. There are traditions which we call religions that have no equivalent word for "religion" in their classical languages—Chinese, for example. Why do we call Confucius (an agnostic when it came to the gods) a religious teacher and Socrates a secular one? Presumably because the tradition of thought and action identified in China with Confucius was extended to cover the characteristic concerns we associate with religion, while the figure of Socrates in retrospect stands outside the Western traditions we call religions, however much they have historically absorbed his thought. We may identify a question of meaning or value as a religious question no matter who asks it. To identify an answer to it as part of a religion is to associate the topic with a historically developed, and developing, tradition.[23]

This chapter identified two main points regarding the word religion. The first was that the word religion has no uniformly acceptable meaning, a point already elaborated in the previous chapter. The second was that we tend to identify something as "religious," beyond our religion and culture, often as an extrapolation from our own understanding of the word religion. Both these facts possess a crucial significance so far as the expression "religious freedom" is concerned. The expression seemed a fairly straightforward matter when first encountered. But now we realize that it is no longer a similar matter because not everyone may understand the word "religion" and therefore the word "religious freedom" in the same way, and moreover, that as we tend to consider what is religious in keeping with our own understanding of the term, we are likely to understand the connotation of the expression "religious freedom" as well in our own individual ways.

Notes

1. Smith (1963).
2. Ibid., p. 48.

3. Ibid.
4. Ibid., pp. 48–49.
5. Ibid., p. 49.
6. Ibid.
7. Ibid.
8. Lindholm, Durham and Tahzib-Lie, eds., op. cit., p. xxxvii, note 16: "The UN Human Rights Committee has observed that 'the freedom to have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including, inter alia, the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."
9. Smith, op. cit., p. 50.
10. Ibid., p. 156.
11. See Ibid., p. 120 and passim.
12. Hick (1990, pp. 110–11), emphasis added.
13. Oxtoby (2002, p. 450).
14. Ibid. He goes on to note (Ibid.): "To expect every religion necessarily to have a systematic doctrine, then, is arbitrary. It excludes a vast and important range of humankind's religious activity from view. So 'religion' defined as 'belief' is not a descriptive definition of the spectrum of phenomena, but a prescriptive restriction to the narrower band within the spectrum that will fit the observer's stipulations."
15. Ibid.
16. Ibid.
17. Ibid., pp. 450–51. He goes on to add: "Confucius is probably as closely parallel to the Greek philosopher Socrates as to any Western figure we might name. For us in the West, Socrates is part of the Hellenic ('secular'?) heritage of our culture, as distinct form our cultural roots in the religion of the ancient Hebrews. But the tradition stemming from Confucius's teachings became quite unmistakably religious in the course of later centuries, when the Neo-Confucians cultivated an inner personal spirituality and speculated on the ultimate nature of things."
18. Ibid., p. 451.
19. Ibid.
20. Reader (1991, p. 6).
21. Oxtoby (2002, p. 451).
22. Oxtoby (1983, pp. 37–38). His comments on Paul Tillich and his search for the criteria to introduce a judgment of validity about the "object" of a tradition as a way of safeguarding against relativism are worth citing (ibid., p. 99): "In *Christianity and the Encounter of the World Religions* (1963, p. 79), Paul Tillich asked where Christianity finds its criteria. The only point from which the criteria can be derived, through participation in its continuing spiritual power, is 'the event on which Christianity is based,' the 'appearance and reception of Jesus of Nazareth as the Christ, a symbol which stands for the decisive self-manifestation in human history of the course and aim of all being.'

    Tillich was content to interpret the power of the universe through the events and vocabulary of the Christian tradition. Late in his career he lectured in Japan, talked with Buddhists, and began to feel the need to rework and restate his thought in more pluralistic or universal terms. A position like Tillich's, which starts from one's own tradition and experience and takes account of others' by analogy, may yet be the shape of Christian theology in the decades to come. But such a position will be under pressure to specify criteria for identifying a pattern of allegiance as a 'religion' and for considering it valid or true. Christians who use traditional Christian standards for judging other religions will at least be able to say with integrity that the standards are their own, but they may be cautioned in dialogue not to impose them on others."
23. Ibid.

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Chapter 4
What Is Religion: The Legal Context

I

If what we mean by religion has implications for religious freedom, then it makes sense to commence an exploration of the topic of religious freedom by first exploring the meaning of religion itself. Such an exploration was first carried out at a theoretical level by examining the question: what is religion? It was later given a thicker dimension by examining the question in a historical context. This process of providing more contextual substance to the question is carried further in this chapter, by placing the question in a legal context. This seems particularly appropriate, as the concept of religious freedom possesses both a moral and legal dimension.

To mention law is to bring the state into the picture, and thus to explore the relation between state and religion. What is religion then from the point of view of the state? As we are talking about the present state systems, it would make sense then to start from the period when this system came into being. In this respect, the Treaty of Westphalia (1648) is considered a watershed and is said to mark the beginning of the present state system. It is supposed to have affirmed the "cuius regio, eius religio" principle, or the principle that "he who controls the region, chooses the religion." As Patrick Glenn notes, "at this point there was little legal point in asking, what is religion? It was what the crown said it was."[1] The treaty however also ended the wars which followed the Reformation, which meant that some scope had to be found for individual conscience and choice, or, in other words, religious freedom. The movement in this direction, represented by the words "religious tolerance", was slow but steady,[2] slow because for a while the principle "intolerance whenever possible, tolerance whenever necessary"[3] prevailed, but gradually the acceptance of tolerance for its own sake rather than under duress came to prevail, ultimately paving the way for the concept of religious freedom, with the emergence of a clear distinction between religious law and state law, which ushered in the modern secular age.[4]

The important point to bear in mind, from the point of view of the theses of the book, is the point often made, that secularity could well be a very Christian development, paradoxical though it sounds, whose roots lie in rendering unto Caesar what is Caesar's and to God what is God's. As Patrick Glenn notes:

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> Caesar would exist only because of unique Christian teaching which recognizes it; the world of Caesar's Palace is largely unthinkable, in all its manifestations, in other religious and legal traditions of the world. This view would be reinforced by the scholarly opinion favouring the view that the very concept of religion could be essentially Christian in character, so that in every conceptualization of church-state relations we would be thinking in essentially Christian terms, necessarily in need of conciliation with other views.[5]

But to revert to the issue of the legal definition of religion, the supreme court of the United States did try to define religion, in theistic terms, in the nineteenth century[6] but that probably reflected the consensus of the time about what religion was. With the emergence of the field of religious studies around the middle of the nineteenth century, and increasing familiarity with a wide variety of expressions of religion on a global scale, the question of defining religion has become increasingly complex, contested, and even thorny.[7] This is not necessarily bad news, in the sense that disciples can continue to flourish without being able to define themselves, just as legal studies continue to flourish even while the definition of law is in dispute.

One of the three trends Patrick Glenn identifies in legal discourse on the issue of defining religion is linked to this point. On the face of it, one might think that a definition of religion would be required in law and its absence would lead to the question: "How do judges and lawyers work with an important and consequential concept when no one is able to state conclusively what it means?"[8] It turns out however that in legal circles "there is increasing sentiment that a definition of religion is neither possible nor necessary in dealing with religious liberty questions."[9] The second trend identified by Glenn is probably a corollary of this, namely, that the boundary of what is considered religion legally has steadily expanded, so that "estimates of the number of recognized religions in the United States now surpass one thousand,"[10] with a similar inclusiveness also in evidence in Europe. This inclusive expansion of the term has contributed to a third trend, which is of some significance for the theses of this book:

> Third, the expansion of the concept of religion has led to increasing visibility of the view that religion is largely a matter of self-definition, or belongs to an inner core of conscience which is not subject to judicial surveillance or interrogation. This is taken to be the definition adopted by Justice Iaccobucci in the majority decision of the Supreme Court of Canada in *Amselem*, (though the judgment also called for a "nexus" of the individual beliefs with religion, a nexus clearly present in the case with the Jewish religion), and Messrs Bouchard and Taylor give this "subjective" conception of religion as now representing the view of "the courts", which they defend. The "subjective" conception would present the advantage of not implicating courts in the internal dynamic of religions, traditional and emerging—and avoiding the "virtually insolvable problem" of defining religion.[11]

Just as Patrick Glenn identifies three trends on the issue of defining religion in current legal discourse, he also identifies three potential challenges to religious freedom. The first of these is directly connected to the third trend in defining religion identified above, namely, the endorsement of the subjective conception of religion. Patrick Glenn observes on this point:

> Religion may thus be subjectively defined, but courts in all jurisdictions have insisted on the necessity for sincerity of belief. Already in 1944 the U.S. Supreme Court had refused

> protection to the I Am movement against mail fraud charges based on religious representations made for financial gain. Essential to the conclusion was the finding that the defendants had composed form letter testimonials from non-existent persons, such that deliberate falsehoods could be taken to imply insincerity in the religious representations. Sincerity of belief was found to be essential in the Supreme Court of Canada decision in *Amselem* and the United Nations Human Rights Commission has refused religious protection to a group whose beliefs and practices were "almost exclusively linked to the cultivation, distribution and use of marijuana". Sincere beliefs may, however, be of great variety and insincerity difficult to establish, such that unconventional beliefs may survive the charge of insincerity, however accustomed courts may be to dealing with such questions of credibility.[12]

The second trend Patrick Glenn notes has to do with the limiting of religious practice (as distinguished from religious belief):

> A more frequently used device to limit religious freedom, in the jurisprudence of the European Court of Human Rights, is to the effect that a given type of conduct may not be a religious *practice*, and thus not fall within the right to *manifest* a religious belief. Prayer time at mid-day may thus be a personal preference and not a requirement of the religion, not a religious practice, so there would be no need to accommodate this particular type of allegedly religious conduct. In the United States the placing of monuments on grave sites has been found not be "a tenet, practice or custom of a larger system of religious beliefs". Defining a religion may be an impossible task, and religion therefore subjectively grounded, or capable of being confirmed by testimony of religious experts. Widely defined religion thus becomes more narrowly defined in its practice, and courts clearly are more confident with practices than with beliefs.[13]

It is however the third trend which is perhaps the most significant:

> The largest challenge to religious freedom derives, however, not from subtle distinctions between truth and sincerity or between religion and practice, but from the ongoing force of the ideas of the exclusivity and territoriality of state laws. This was arguably the great victory of the law of the state, at least in a considerable number of states, the overcoming of territorial legal diversity and the marginalizing of non-state sources of law. In its still-leading 1990 decision in Oregon v. Smith, the United States Supreme Court, or at least a majority of its judges, held, with respect to the smoking of peyote by a group of aboriginal people as part of their religious beliefs, that an individual's religious beliefs are no excuse "from compliance with an otherwise valid, law prohibiting conduct that the State is free to regulate". The guarantee of religious freedom would therefore not bar application of a neutral, generally applicable law to religiously-motivated action. What is religion becomes a largely unnecessary question.[14]

This third trend does contain the potential of inducing pessimism so far as the future of religious freedom is concerned but Patrick Glenn nuances the situation enough for a silver lining to become visible on this dark cloud. He points out that a distinction is drawn by lawyers "between state laws which are of public order, admitting no exception, and those which are not."[15] He also points out that whether a particular state law belongs to one category or another is also a matter of on-going debate. He further notes that the "conclusion that state law is always of general and mandatory application is inconsistent with the constitutional guarantees of religious freedom, which are intended to protect against *more than* discriminatory legislation directed at particular religions."[16] At this point the situation under American and Canadian law presents a contrast, although the contrast could be overdone. Despite

efforts to the contrary, *Smith* is law in the United States, while in the *Anselem* case, the Supreme Court of Canada "clearly indicated that state law yields when it places substantial burdens on religious freedom and when damage to state law and the rights of others is minimal."[17]

Patrick Glenn's offers two interesting perspectives in the light of the comparison instituted between the U.S.A. and Canada. One perspective looks at the situation common to both the countries so far as religious freedom is concerned and the other contrasts their positions. On the point of convergence between the American and Canadian cases, he writes:

> In the result, both in Canada and the U.S., as elsewhere, there is an ongoing need to know what religion is for purposes of the guarantee of religious liberty. Given a large and subjective definition of religion, however, the role of courts can and should be concentrated on determining the level of necessity of application of state law. This is quite within the ambit of traditional judicial functions, and leaves a spacious middle ground for reconciliation of state and religious values.[18]

The point of divergence in the two cases Glenn develops as follows:

> In the U.S. Supreme Court's *Smith* decision Justice Scalia quoted an earlier U.S. decision which stated that "We are a cosmopolitan nation" and he then concluded that because of this cosmopolitan identity and human diversity it was necessary to ensure uniform application of state law. He expressly stated that a contrary conclusion would be "courting anarchy". To the best of my knowledge, however, there are no anarchists sitting on the Supreme Court of Canada, and the Canadian experience is to the effect that a cosmopolitan state must be cosmopolitan not only in its composition, but in its ongoing and multivalent means of reconciling the claims of its cosmopolitan population.[19]

II

The question of the legal definition of religion, and its implication for religious freedom, can be delved into further by examining the *Amselem* case, referred to earlier, in more detail.[20] Moise Amselem was an Orthodox Jew living in a condominium in Montreal known as Le Sanctuaire. The autumn festival of Sukkot requires the construction of what is called a *Sukkah*, a temporary bower for dining. He decided to build one on his balcony and went to court when denied permission. Amselem claimed that by denying him the right to build a *Sukkah* the way he wanted, Le Sanctuaire had violated his right to religious freedom, this despite the fact that either the buildings communal *Sukkah* or the one at a nearby synagogue could have been used for the purpose. Does Jewish law require one to build a private *Sukkah*? Apparently there could be two opinions on the point. The Orthodox rabbi testifying for the defense did not think so, the one testifying for the plaintiff did.[21]

Amselem lost the case, appealed to the Supreme Court, and won. From the point of view of the legal definition of religion, what this decision did was to privilege the subjective understanding of religion, by holding "that 'expert' declarations of religious law must not supersede personal affirmations of religious belief."[22] Justice Iacobucci, writing for the majority, distinguished between two definitions of religion, between what might be called an "outer" one and an "essential" one. The

"outer" definition was considered necessary so that religious beliefs could be distinguished from conscientiously held secular beliefs and was spelled out as follows: "Defined broadly, religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power."[23] The same para also contains what has been called the "essential" definition of religion, which was spelled out as follows: "In essence religion is about freely and deeply held personal convictions of beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfillment, the practices which allow individuals to foster a connection with the divine or with the subject of object of their spiritual faith."[24]

Katherine Young and Paul Nathanson fault the court's handling of the definitional issue pertaining to religion on the following grounds: (1) The ideas of a "divine, superhuman, and controlling power" would be rejected by Buddhists, so the court's formulation is under-inclusive. (2) The court's definition is "both subjective and individualistic," but according to scholars of religion, "religions always refer to what they consider *objective* truths and always have a *communal* dimension."[25] (3) The court seems to have chosen the line of least resistance out of fear "of having to adjudicate the claims of expert witnesses, whether religious insiders, academic, or both" by claiming that it is "'not for a court to decide what a religion should believe' and [that] the 'courts are not arbiters of scriptural arbitration'"[26] and by being insufficiently interested in the outer definition of religion "except as a way of nominally or expediently qualifying *Amselem* as a case about freedom of religion by establishing some vague 'nexus'[27] with religion."[28] They finally lower the boom as follows:

> Both definitions of religion, the "outer" and the "essential," emerge from popular parlance; the latter, especially, conforms to popular notions of religion. Unfortunately, this is the popular parlance of a society that has already become generally indifferent or hostile to religion and therefore ignorant of religion. As a result, the current legal definition is inadequate. . .For the time being, we suggest that the justice system, if it is to take religion seriously at all, and it must do so according to the Constitution, requires a definition that relies on empirical evidence instead of what amounts to "hearsay." In other words, the courts should consult professionals who study religious phenomena just as they do professionals who study psychological or sociological phenomena.[29]

Katherine Young and Paul Nathanson do more than castigate the court's definition of religion as "New Agey". They proceed to empirically formulate certain features of religion to indicate where precisely "New Agey" definitions fall, on a spectrum evolved on the basis of their empirical investigations.

Central to their definitional enterprise is the concept of a worldview, which they elaborate as follows:

> *Worldviews:* Religion has a larger cultural context. It is one kind of worldview. We use "worldview" as the broadest category for our purposes here, even though its connotation is much too cognitive, only because we lack a better word. All social groups (families, communities, nations, civilizations, and so forth) either inherit or produce worldviews: general orientations that bind people together by giving them not only enough meaning and purpose for personal life to make sense but also guidance for the activities that create communal life. These worldviews have both cognitive *and experiential* dimensions; both conscious

and unconscious dimensions; and both personal *and collective* dimensions. There are now three main kinds of worldview: (a) religious; (b) hybrid; and (c) secular.[30]

Then they elaborate religious worldviews as follows:

Religious worldviews: Our definition of "religious worldview," as we say, relies on both cross-cultural and historical evidence. It encompasses not only world religions but also primal, or aboriginal, religions. All are among the religious worldviews of Canada.

Religious worldviews have all the characteristic features of every worldview *plus* all or most of the following ten.[31]

These ten features are listed below:

(1) They presuppose either *supernatural dimensions or ultimate experiences* (or both) that transcend but also transform everyday life.[32]
(2) They help people live with fundamental *paradoxes* of the human condition and respond to *existential questions* that emerge from it.[33]
(3) They rely on *symbol systems* that give coherence to both personal and communal life; apart from doing anything else, religion provides the symbolic glue that holds communities together.[34]
(4) They presuppose both *sacred time* (as distinct from profane, not secular, time) and *sacred space* (as distinct from profane, not secular, space).[35]
(5) They find *primary expression* in forms such as myth, scripture, hagiography (sacred biographies), and ritual.[36]
(6) They find *secondary expression* in their interpretations and applications of primary ones; these secondary expressions include kinship, taboo, theology, philosophy, morality, law, the arts, and so on.[37]
(7) Considering the characteristic primary and secondary features of religious worldviews *together*, it becomes clear that they are c*omprehensive or nearly comprehensive ways of life*.[38]
(8) They sustain *groups* (defined by birth or choice), not merely isolated individuals; every community has a public dimension, in other words, which involves at least some face-to-face encounters.[39]
(9) They claim sources of *authority* for these ways of life and thus for belonging to the group.[40]
(10) Finally, religious worldviews are successful enough to *endure* for a long time.[41]

As for secular worldviews:

Secular worldviews have all the characteristic features of every worldview *except* the following:

They presuppose only the *natural or cultural order* as known to us through the senses.

They acknowledge only *reason in general and science in particular* as the ultimate authority.

Before proceeding, please note that the word "secular," like the word "religious," is an academically *neutral* label. Nothing that we write should indicate that either is more valuable than the other. Each is merely a distinct phenomenon.[42]

The defining of religious worldviews on the one hand, and of secular worldviews on the other, creates the possibility of hybrid worldviews. This is an important contribution of Young and Nathanson to the definitional issue regarding religion in law, and their formulation, despite its length, needs to be cited in detail for all its nuances to be grasped:

Hybrid worldviews: These have occurred throughout history, but we are interested here in those that combine religious and secular worldviews in response to modernity. They do so

in various ways: explicit religiosity with implicit secularity, implicit religiosity with explicit secularity, or explicit religiosity and secularity. Among the most common today are those that observers classify collectively, albeit loosely, as "New Age." We will use New Age to illustrate hybrid worldviews.

New Age groups—over 3,000 have emerged since the 1960s—have the following characteristics, which we have arranged for convenience to follow the pattern of religious worldviews:

They refer to supernatural dimensions or ultimate experiences, but these are less transcendent than those of most religious worldviews.
They explore paradoxes and existential questions, but their discussions are much "thinner" than those of religious worldviews.
They use eclectic symbol systems, which can undermine coherence.
They designate sacred times and spaces, but they give prominence to neither.
They acknowledge primary features of religion such as myth, scripture, hagiography, and ritual. But these are usually ad hoc, syncretistic, or simply thin.
They acknowledge secondary features of religion such as taboo, theology, philosophy, morality, the arts, and so on. By emphasizing personal choice, however, they limit these features to the ones that allow as much personal autonomy as possible.
They refer often to "holism," which connotes com-prehensiveness. Because New Age groups have few secondary features, however, the word "comprehensive" is somewhat arbitrary.
They often emerge to deliver or induce intense experiences. Being so individualistic, however, these groups tend to be both amorphous and ephemeral.
They adopt either pragmatic or individualistic attitudes to authority.
They have not yet endured for a long time.[43]

Young and Nathanson are led to making some important suggestions on basis of this analysis. What Young and Nathanson have in effect demonstrated is that the "outer" definition used by the Supreme Court of Canada in the *Amselem* case needs to be expanded,[44] and the essential definition abandoned[45] as "there is no personal essence of religion, because religion always has a collective dimension."[46] Then they proceed to make a significant suggestion in the form of an appeal to representatives of religion not to cede ground unduly to the judiciary:

In *Amselem*, the two expert witnesses—both of them Orthodox rabbis—disagreed with each other. Additional Orthodox rabbis would surely have tipped the weight of evidence toward one side or the other, because Orthodox Jewish legal authorities accept the principle of rabbinic consensus. Lacking rabbinic consensus in this particular case, the Court had to rely on external criteria no matter how inadequate even from the perspective of qualified outsiders. *This should be a wake-up call to religious leaders. If they can neither find consensus nor assert their own authority, then they run the risk of allowing interference by the state and thus not only undermining their own legitimacy but also undermining that of religion in general.* It would be wrong to assume that *Amselem* illustrates the rule and thus justifies the imposition of a definition that cannot do justice to religion. On the contrary, this case illustrates that exceptions are unsuitable as the foundations for good laws.[47]

Young and Nathanson are not arguing that people with subjective understandings of religion cannot enjoy freedom of conscience or belief. They are arguing that may not do so by invoking *religious freedom:*

If court cases involving hybrid worldviews cannot qualify for legal considerations under freedom of religions, because they do not qualify as religions by our definition, could they nonetheless qualify under some other category? We suggest freedom of conscience.[48]

III

The preceding discussion of the legal definition of religion in the first section of this chapter, and the detailed examination of the theoretical implications of *Amselem's* case in the second, has now brought us to the threshold of investigating another major issue relating to the definition of religion and the implications of this definition for religious freedom. An entry into the discussion is provided by the trichotomy evolved by Young and Nathanson in the examination of the *Amselem* case, namely, that among religious worldviews, secular worldviews, and hybrid worldviews. This typology helped us understand the phenomenon of New Age religions in a useful way. It might take us deeper into definitional territory if we raised the question: should the religious and secular worldviews be distinguished as sharply as they would have us, for the distinction between them turns on the transcendental dimension, which is admitted in the religious but rejected in the secular world view. Perhaps a sharper focus could be provided to this discussion by asking and trying to answer the following provocative question: Is Communism a religion?

Even the casual reader would have noticed that certain issues tend to recur in the book, such as what is religion, what is its relation to the secular, and so on. Communism promises to provide an interesting test case for such issues discussed in the course of this book. The rest of this section is therefore devoted to an examination of the question: Is Communism a religion?

The question, it turns out, has been explored several times in the past by many scholars in the field. It might be helpful traverse this ground, even at some length, to obtain an idea of where we stand.

An early scholar to address this issue was the historian, Arnold Toynbee, who described Communism as a Christian heresy,[49] but let us now turn to scholars of religion per se.

Views of R.C. Zaehner

R.C. Zaehner, the Spalding Professor of Eastern Religions and Ethics, also dealt with the issue, but in a different way. He added a discussion of Marxism and Jungian psychology as the new Buddha and the new Tao, to a discussion of the world religions in a book edited by him. He is thus, in contrast to Toynbee, more impressed by the similarities between Marxism (and Jungian psychology) and Eastern religions. He writes:

> This brief account of the essential differences that separate the two great traditions seemed necessary if the reader is to understand the strictly oriental religions at all. It is largely for this reason that I have added a final chapter to this book entitled "A new Buddha and a New Tao" which deals with Jungian depth psychology and Marxian dialectical materialism; for both systems of thought bear an unmistakable likeness to much that is typical of oriental religion. The great monotheistic systems of the Near East, which the West has in part inherited, never tire of emphasizing the absolute distinction of God from the created order: God and Nature are not interchangeable terms as Spinoza maintained. In the oriental

> systems, however, the two are in fact never clearly distinguished: God is Nature and Nature is God. This is what brings the oriental religions so very close to both Jungian psychology and dialectical materialism at least as expounded by Engels. Jung quite rightly saw that much in oriental religion would more properly fall under the category of psychology than of religion, at least as the latter term is understood in the West, and he consequently draws frequently on oriental sources to substantiate his own psychological theories. Jung has in fact captured the essence of much in oriental religion and reduced it to purely subjective and psychological terms. Similarly Engels' whole philosophy of dialectical materialism with its interpretation of all existence as a perpetual and ever-changing flux superimposed upon fixed and immutable "Laws of Nature" is a re-statement in modern terms of a central doctrine of the Upanishads and of philosophic Taoism. Jung and Engels on the one hand, and the Indian tradition with its Chinese equivalent, Taoism, on the other, mutually illuminate each other. We shall have to speak of this again in our conclusion.[50]

He made these remarks in the Introduction to the book. He then returns to the theme in the conclusion as follows. At first he is inclined to contrast Buddhism and Marxism:

> Whereas Buddhism offers individual salvation in the total extinction of individuality in the "unborn and unbecome," Marxism offers collective salvation here and now in a "monolithic" society in which the individual is asked to identify himself not with a *Brahman* or a Tao but with the living and toiling collectivity.[51]

But he is ultimately more impressed by what he sees as the similarities.

> Yet philosophically Marxian Communism and Mahāyāna Buddhism are closely akin. "If all is the same," as Dr. Conze writes, "then also the Absolute will be identical with the relative, the Unconditioned with the conditioned, *Nirvāṇa* with *saṃsāra*." For Engels the "eternal," which is for the Buddhist *Nirvāṇa*, is the Law of Nature which is "the infinite and hence the essentially absolute": but the finite and the infinite do not exclude each other, they are "poles which represent the truth only in their reciprocal action, in the inclusion of difference *within* identity." Philosophically the two systems are not dissimilar, since they both equate *Nirvāṇa* with *saṃsāra*, mind with matter, but the equation works out in opposite directions; for whereas *Nirvāṇa* is the only important "pole" of the opposites for the Buddhist, *saṃsāra* or matter is all-important to the Marxist. For him the opposite pole is not simply an eternal something which forms the backcloth to the saṃsāric puppet-show but the eternal law which regulates all change. To live in accordance with This Law is to live in accordance with Nature itself; it is to achieve one's *Nirvāṇa* here and now in space and time. *Seen in this light the triumph of Communism in China represents the triumph of the claims of saṃsāra over against Nirvāṇa*, of matter over against spirit; it is the quite natural assertion of the material world to its due place in the created order, for the indiscriminate identification of matter and spirit inevitably leads to the deification of one or the other; and the Mahāyāna identification of the two must in turn be seen as the natural revolt against the view that matter is no more than the prison-house of the soul.[52]

Views of Ninian Smart

Another scholar who takes up issue is Ninian Smart. According to a typology made famous by him, Ninian Smart identifies the following six dimensions of religion: (1) the experiential dimension, (2) the mythic dimension, (3) the doctrinal dimension, (4) the ethical dimension, (5) the ritual dimension, and (6) the social

dimension. These mean more or less what one would expect them to.[53] Smart seems to prefer the term worldviews over religion as this enables him to include Communism or Marxism and nationalism into his discussion of religion, somewhat like Zaehner. He sometimes alludes to Marxism while discussing these dimensions, as when he points out during the discussion of the mythic dimension that Marxism for its part "produces socialist realism, a particularly heroic style of art which invests matter with a kind of shining light and in fact brings out the symbolic importance of production, revolutionary war, and so forth in the furthering of socialism and the consummation of human history."[54] In the course of discussing the doctrinal dimension, Smart notes:

> If we look to the Hindu tradition, we see a number of differing systems of thought about the true nature of the divine Being—systems known as Vedānta. In Marxism, the interpretation of the onward dialectical patterns of history depends upon a view of the cosmos as being made up just of matter (hence the name "dialectical materialism" for Marxist doctrine).[55]

Another element, which could find a place in the doctrinal dimension, is the discussion of materialism in relation to Marxism in two contexts, first as plain materialism and then as philosophical materialism. Marxism may then be related to plain materialism as follows:

> [M]aterialism in its various forms sees the mind as just a byproduct of the cosmos. The world was not created by God; God was created by us and we are created out of matter. There have been materialist philosophies since ancient times—for example, in India at and even before the time of Buddha, and in ancient Greece. But in modern times there are two. One is Marxism which, in its understanding of human history, gives a special role to economics and theories of material production. Marx thought that life arises out of matter, and in due course society emerges in a form which contains within itself certain contradictions or tensions. These tensions bring about a struggle between economic classes which helps to fuel the onward drive of events. But culture and knowledge are essentially byproducts of material relations. For Marxists, religion is an illusion. There is no need to postulate a God to explain change and motion in matter: rather, the inner contradictions in matter supply the dynamics for such change.[56]

The relationship between philosophical materialism and Marxism is then visualized by Ninian Smart as follows:

> The second form of materialism, "philosophical materialism," holds that conscious states—the center of what we call the mind—are nothing but specific kinds of physiological processes occurring in the brain and central nervous system. This doctrine produces a worldview which rejects claims that God exists in a purely nonmaterial state, or that the human soul has a real, but nonmaterial, substance. To put it crudely: if God existed he would have to be a material being like ourselves, and so could not be the creator of matter. Such materialism is, like Marxism, atheistic. But it differs from Marxism in not having the special theory of history and economics which has made Marxism such a telling force in the interpretation of historical experience.[57]

Marxism also makes its entry in the discussion of the ethical dimension as follows: "Somewhat opposed to the individualism of much of the West's thinking is the collectivism of the Marxist tradition. Here human behavior and economics are so closely woven together that ethics too is seen as collective: actions are good insofar as they bring about revolution which will consolidate socialism, or insofar as

they preserve the revolution and help in the march toward an ideal society in which human beings live in harmony."[58]

Smart's invocation of Marxism in the context of faith is not without interest, when he notes that "many people believe in faith, and in faith alone: some take the Bible as absolute; others the Koran; others the Vedas; others the Marxist tradition."[59]

Views of Willard Oxtoby

Willard Oxtoby enables one to extend the discussion further. He suggests, while discussing the term religion, that one way to understand what it means might well be by "considering activities that are like religion but we commonly agree are not religion."[60] He presents Communism as an example, noting that "for over 70 years after the Russian Revolution of 1917, it seemed to many that the Communist system, built on the socialism of Karl Marx (1818–1883), posed a worldwide threat to the future of religion."[61]

Oxtoby notes that while Communism repressed traditional religion as a matter of state policy, it, at the same time, bore "some curious resemblances to religion itself."[62] These resemblances, according to him, "are particularly noticeable *vis-à-vis* the three major Western monotheistic religions: Judaism, Christianity, and Islam,"[63] contra Zaehner. He elaborates as follows:

> Communism, like the prophets, seeks to liberate the poor from exploitation and injustice. Communism, like the monotheistic religions, finds direction, meaning, and significance in history. Again like them, it idealizes a future moment when evil is to be overthrown and justice is to prevail. A new order will be ushered in, the classless society corresponding to the kingdom of heaven.[64]

Oxtoby then institutes a remarkable parallel between Communism and traditional religions as follows:

> Communism, like traditional religions, wants to state an "is" and derive from it an "ought." There is a huge philosophical difference between descriptive laws of nature, which must be modified to suit the behaviour of phenomena, and prescriptive laws of society, which expect the individual to modify or conform in behaviour and which threaten punishment for failure to do so. Both communism and religion seek the benefits of description and prescription simultaneously. Each sees the order of things as a description of the way things necessarily are, and at the same time proposes to derive from that a prescription of the way individuals should voluntarily behave.[65]

Finally, Oxtoby adds:

> Moreover, communist ideologues have resembled missionaries in their zeal to spread their teaching. The community of the committed participates in group rituals that reinforce solidarity. Intense pressure is brought on individuals to confess and publicly disavow their faults and shortcomings. And the cult of the leader, in the case of China's Chairman Mao Zedong (r. 1949–1976), featured a scripture-like use of an anthology of his quotations, a pocket-sized book bound in red.[66]

If the resemblances are so close then why not call Communism a religion? Oxtoby provides two main arguments here. The first is basically that Communism does not consider itself a religion.

> Yet communism has not thought of itself as a religion and has shown considerable hostility towards it. In some states, freedom of religion, though promised formally, has been ignored in practice, and open identification with any religious community has often been a barrier to party membership. Nor, worldwide, have devotees of religion or students of it commonly considered communism a religion. Communism has been a politico-economic ideology, with analogies to religion in both doctrine and practice.[67]

The second is that Communism lacks a transcendent reference (although some would argue that it accords a transcendental *status*, as it were, to historical immanence).

> A key difference is whether a power may exist above or beyond humankind. Religion, characteristically, says yes; the way or power of the universe governs us. Communism has said no; history is human history, and controllable by humans. This postulation of a transhuman power is sometimes termed faith in transcendence. When communism is excluded from status as a religion, it is generally because those who exclude it deem its ideals to lack the essential ingredient of such faith.[68]

Willard Oxtoby touched upon the missionary character of Communism in passing. This point is developed further by Max Stackhouse, who firmly places Communism in the missionary camp as follows:

> One or another universalistic vision has provided the foundations and motivations for Buddhism, Christianity, Islam, and that fading secular "civil religion," Communism, to name but four of the most obvious missionizing faiths. Certain strands and periods of Judaism, Zoroastrianism, and "syncretistic" religions, such as Baha'i, Sikhism, and the Unification Church (Moonies) have a similar dynamic. A universalistic metaphysical-moral vision is less pronounced, however, in the beliefs of the primal religions, Daoism and Shintōism, and is less overt in Confucianism and most strands of Judaism and Zoroastrianism. However great their spiritual, moral, and intellectual achievements, these latter religions are constitutively tied to specific sociopolitical contexts and often to ethnic particularities. These religions may also claim to possess a universalistic message—they may welcome converts, and aspects of their metaphysical-moral visions may be honored or adopted by other religions, but they spread more by the migrations of peoples or by the gradual incorporation of immediate neighbors than by organized missionary activities. They are, as some say, the "staying" religions, in contrast to the "going" religions.[69]

Some observers have even gone so far as to maintain that Communism may currently be undergoing a fundamentalist revival, like so many other religions. John Gray writes, for instance, while reviewing the book—*The Writing on the Wall: China and the West in the 21st Century* by Will Hutton, as follows:

> A decade ago policy-makers and opinion-formers were supremely confident that globalization meant the spread of western institutions and values throughout the world. This confidence was not based on any rational assessment of facts. The mania surrounding globalization was only the latest incarnation of the Enlightenment faith that the advance of science and technology would create a universal civilization. Predictably it was not long before it gave way to anxiety. Islamist terrorism and the emergence of Russia as an authoritarian great power, together with US troubles in Iraq, have shattered the certainties of the 1990s. Yet the faith they expressed has not been destroyed. *In its most influential forms the*

Enlightenment has always been an ersatz religion—think of Marxism, for example—and in response to the shocks of the past years it has undergone a fundamentalist revival in much the same way that other faiths have done.[70]

Views of Stephan Schlang

The question whether Communism is a religion or not may be approached from another angle, if the manner in which the term religion may be used is *analyzed further*. Stephan Schlang draws attention to this possibility when he writes:

> The concept "religion" is used in literature either as an actor category or as an observer category. As an actor category which is used by the participants of a given culture, "religion" is restricted to the Western world or to people strongly influenced by it. Studying non-European people scholars generally use "religion" as an observer category. Then it refers to acts and beliefs joined by the scholar into a coherent and definite system which is not necessarily regarded as such by the participants. Here the problems as described above arise.
>
> As already mentioned, most Maori would also use "religion" as an observer category only, that is, when talking about the white New Zealanders. Although the latter may not fully share the Maori view of religion, there would be a mutual agreement on its restricted character. Therefore in this case the observer category fits because it is identifiable with the actor category.[71]

In making this distinction between observer and actor categories, Schlang is drawing upon the work of W. Cohn.[72] And Stephan Schlang draws attention to a third sense in which the word religion might be used:

> Cohn mentions a third way in which the concept of religion may be used. Then it is also an observer category and refers to a coherent system of acts and beliefs which is regarded as such by the participants who, however, would not call it religion. A good example for this case is the use of the term religion to denote ideologies like communism.[73]

Cohn's categories are usefully summarized by Hans-Michael Haussig as follows:

> Werner Cohn distinguished between three meanings of religion. In his opinion religion may be first a category to its own participants, the actual actors in the given culture. Second, it may be a category which is used by the scholarly observer to designate a set of activities which the actors would not term religious, but which nevertheless form a coherent institution for the actors. Finally, religion may be a category constructed by the scholarly observer out of a variety of activities which the actors do not ordinarily combine into a coherent institution. According to Cohn the scholar describing non-Western traditions might either be not conscious of the distinctions of religion and non-religion in his own tradition or define religion in the third sense, but lean to the first or second meaning in the course of his discussion.

Frank Whaling rightly states in the light of such ambiguity, that,

> [O]ne of the probable reasons why the study of religion has not become even more important than it is lies in the fact that it has not been content to settle upon an agreed set of given data which would constitute it as a rigid discipline wherein a particular definition would be universally appropriate.[74]

Views of Ninian Smart Revisited

The question whether Communism can be treated as a religion or not leads to a larger issue of enormous significance in the discussion of religious freedom, namely, do we want to maintain a wall of separation between religion and the secular, if we are open to assessing an avowedly secular movement such as Communism in terms of religion as a category. Ninian Smart has drawn pointed attention to this as follows:

> Do we want religion to cover secular symbolic systems or not? I consider it highly desirable, from various points of view. First, it is anomalous to have an aspectual study which does not cover all of its aspect. If what we deal with essentially is the religious and symbolic aspect of human life—rituals, ultimate beliefs, myths and so on—then it is bad if a whole chunk is left out, and it leads to confusion including scientific confusion. We have had studies in the past which begin from a particular worldview and interpret others from the categories and values of that worldview, notably in sociology (e.g. Berger's *The Sacred Canopy*). They can be illuminating, such studies, but they do not deal with the problem of distinguishing themselves from what regularly goes on in theology. There is a decent worldview-neutralism we should strive for, hard as it may be: because then at least our hypotheses are open to testing. But it does seem odd that we should analyse the ritual of the Theravadin temple and not that of the Sri Lankan State.[75]

Ninian Smart sees many benefits in dealing with both secular and religious symbolic systems in the same breath and recounts the benefits of doing so. One such benefit accrues in the form of enriching our concept of sycretism.

> There are fruits from dealing with not just religions but with more broadly worldviews (suitably deepened to include their performative structures). One is a new view of syncretism or blending. If Catholicism absorbs Mexican saints who are old gods, we say "syncretism," or we might think of the Unification Church as blending Confucian and Christian motifs. But it is just as much syncretism when Lutheranism takes on board the values of liberalism, or Catholicism blends with Marxism in the shape of liberation theology. So one fruit might be new theories of blending.[76]

Another benefit accrues in the form of forming a more nuanced perspective of state-church relations.

> Another fruit is to see continuities of function. The true heirs of the old Church-and-State solidarity of Lutheran, Anglican and Presbyterian countries and principalities in Europe are—or were—the Marxist States, not the rather wishy-washy establishmentarianism of England and Sweden. It was in those Marxists States that you had, to get on in life, to affirm (so to speak) the Thirty-Nine Articles of the Church of Lenin.[77]

Yet another insight such a study would offer would be in terms of illustrating the possibility of how history can be used as myth.

> Again, the washing away of a fundamental distinction between religion and secular worldviews enables us to ask more sensible questions about the function of systems of belief, and perhaps to use religious-studies insights in the analysis of modern societies: what are the important rituals? what are the myths? and so on. Regarding myth, for instance, it is obvious in the modern nation-state that the basic myth is given in history and literature—the history of the people helps give it identity, and its military heroes are complemented by the poets and musicians too.[78]

It would also enable us to take a new view of religious affiliation.

> We can ask too about privatization. As authority in religion is affected by modernity (and postmodernity, which is after all just a new phase of modernity), so we are finding increasing numbers of citizens who, not irreligious in the traditional sense, are not affiliated, and who make up their own religious beliefs in various blends of motifs.[79]

We have seen how the question of defining a religion as been a thorny one. Replacing religion with worldview might then present a very new and more relevant perspective on religion.

> I would argue that there are gains in stretching the scope of religious studies and so in effect the definition of religion. It is of course awkward in ordinary conversation. So I use the term "worldview" and the phrase "worldview analysis" for what we do. It is not the best of words, but the English and other languages are very poor in vocabulary for discussing beliefs, ideologies and the like. Often the vocabulary of a people simply reflects its own religious history and that is typically not good for describing other systems. It is a problem which we have to struggle as best we can. Eventually eclectically we may be able to borrow from other tongues, and absorb such terms as *mārga* and *dharma*.[80]

It might then have the effect of liberating us from linguistic constraints of our own devising, which narrow our vision of a lived reality.

> I referred to the study of religion and religions as aspectual: in this it is like politics and economics. Everything has at least some slight economic consequence or meaning. Everything likewise has at least some slight religious or symbolic meaning. Some things are intensely economic or symbolic—the Stock Exchange and the Mass. It is, as I said, unfortunate if the aspect of human existence that concerns us is artificially divided by human language, and one corner put out of bounds to students of religion thereby.[81]

Ninian Smart braids many of these devices together to present his overall argument elsewhere as follows:

> . . .I would also plead for greater immersion of our studies in modern phenomena. This is not to reduce our scope. Our ancient offerings have always been excellent: but our modern inquiries need expansion. We should take note of such themes as globalization, the interfacing of traditions, new movements in religion and ideology, individualization, nationalism and so on. In certain respects nationalism (for instance) is obsolescent in our transnationally corporative world: but it still has tremendous power, and no more than when it merges with religion. We note too the growth in our world of privatized and eclectic religion, and some crumbling of traditional authorities. As Professor Bianchi has rightly argued, the definition of religion is analogical: and analogies flow outwards from religions properly or conventionally so called into ideologies. They should be part of our purview. It seems to me strange to count religion-religion blends as syncretists, but not religion-ideology blends. Such a wider view of our field, as worldview analysis, is I think very fruitful. We should note by the way that ideological slants may be as much a menace to descriptivism as theological ones, as those who have worked in proximity to Marxist-oriented departments will know. On the question of modernity in our studies I would add that the only religions we shall actually meet are modern ones.[82]

Views of R. Panikkar

R. Panikkar raises similar issues. He asks, for instance: "Who has the power to determine what religion means? Even today the very word 'religion' in the United States and in the United Kingdom has different connotations, let alone the word 'religione' in Italy—without trespassing the linguistic-etymological constituency of the Latin word 'religio.'"[83] He follows this up with a comment which has a crucial bearing in our context: "Many a person would not like to be pinpointed as being a christian or a hindu, for instance, or as atheist or marxist. Many would reject the notion of religion altogether and declare themselves a-religious. But saying this they may very likely adopt for their lives the same basic attitude than many who call themselves religious."[84] He goes on to say:

> There are disparate notions of religion. Some of them also mutually contradictory. And unless we define more or less arbitrarily who enters into our club and who does not, we cannot dictate legitimately what is a religious attitude. If a marxist or a humanist tells us that all what a religious person considers paramount is subsumed and even enhanced by the values of the habitually called non-religious person, what right or reason do we have to exclude those human movements from the field of our study? We know well that each epoch has a prevalent myth which describes the contours of any given concept. What is a catholic and a good roman catholic today is almost unrecognizable if seen with the eyes of equally "good catholics" of another time or space. For millennia "hindusim" has functioned without this name, and even today the word is somewhat suspect to many.[85]

This leads him to the issue we are involved in discussing at the moment. He writes:

> Now, a word means both what we instill into it and what the word itself allows to be instilled upon. Confucianism, Buddhism, and Jainism were for a time forbidden to be included in the clan. Later on they were admitted. Marxism and humanism are generally not admitted—besides the fact that these latter groups, unlike the Buddhists, Jainas and Confucianists of olden times, do read what "religionists" write and generally are not keen in being co-opted under the name "religion"—unless, of course, the use of the word opens up to new connotations. Anybody teaching "religion" in secular schools and universities will remember the jokes and smiles of "scientific" colleagues who link the name religion with a pietistic, narrow, and unscientific spirit. In many countries, the fact, the teaching of religion is still considered a peculiar case in the educational curriculum of a "modern" citizen. "Religion" sounds sectarian and unacademic to many, or at best a private affair. Once again, the power of the name.[86]

He is thus led to a position similar to Ninian Smart's when he writes:

> In this sense there are not anonymous religions because a "religion" without its name is not a religion. We cannot stick words at pleasure like labels on the pots of a supermarket or posters on a wall. The very activity of giving names to things (the very etymo means human assembly) is, since Adam, a human action charged with responsibility. When Confucianism was not included under the name of religion, the study of religion did and could not include Confucianism, and if a Confucianist was discovered to be a religious person this was in spite of and against the fact of being a follower of K'ung Fu-tzŭ. No wonder that christian missionaries would aspire to convert the "a-religious" person to their own religion. When an atheist collaborates with a Muslim in a common project, say for peace, that activity is a religious one for the Muslim, not so for the atheist. No wonder that they may eventually depart ways if the meaning of the word religion is not clarified and perhaps deepened or

> changed. Human relations are mainly linguistic relations, the interactions are dialogical. The academic study of religion is also a political factor influencing the very meaning of the word.[87]

Both Ninian Smart and Raimon Panikkar, however, point to a feature of the definition of religion which will detain us in the future. Ninian Smart does so when he cites Professor Bianchi as rightly arguing that "the definition of religion is analogical: and analogies flow outward from religions properly or conventionally so called into ideologies."[88] Raimon Panikkar moves in the same direction when he acknowledges: "whatever the destiny of the word may be, the reality of religion is in fact enshrined in the word. It is the word which from meaning a virtue or a particular cultic activity came to mean, against the message of the Gospels, the quintessence of Christianity and, by extension, was applied to those cultural constructs which were akin to the christian religion, the Abrahamic traditions first, the African later, and by a further extrapolations was used to refer to all those 'similar' movements in the East, not without confusions and mis-understandings. Many words, like the Japanese *shukyo* were artificially formed to suit western scholarship: the 'teaching' (*kyo*) of the 'original or essential component' (*shu*)."[89]

Views of Benson Saler

Benson Saler has developed this view further in the light of prototype theory. He writes:

> This approach derives from prototype theory as that has been developed by cognitive scientists of several disciplinary affiliations. "By prototypes of categories," the psychologist Eleanor Rosch writes, "we have generally meant the clearest cases of category membership defined operationally by people's judgments of goodness of membership in the category." When we speak of prototypes, she continues, we are engaging in "a convenient grammatical fiction," for what we are really referring to are judgments about degrees of prototypicality.[90]

Saler then goes on to say:

> There are precedents in the study of religion for such an approach. I have already cited William Alston's recommendation that we elaborate in detail the relevant features of an ideally clear case of religion and then indicate the respects in which less clear cases can differ from this, without hoping to find any sharp line dividing religion from non-religion.

Fitz John Porter Poole, who evinces a multi-disciplinary appreciation of family resemblance, analogy, metaphor, and the idea of polythesis, allows for that approach also. And in a paper published in 1984, Wilfred Cantwell Smith writes that

> the term "religious" designates those matters in Western history that have generally been called religious there—specifically, Christian and Jewish tradition and faith—plus anything else on earth that is significantly similar.[91]

He concludes by saying:

> It must be admitted that an approach derived from prototype theory is by no means unproblematic. For one thing, what we regard as our clearest exemplars of religion are neither timeless nor monolithic. Rather, they constitute dynamic families. (Their variations in time and space, indeed, might be productively mapped by methodologies that pivot on the concept of polythesis). Some critics, moreover, may deem it outrageously ethnocentric to treat what we call Judaism, Christianity, and Islam as the clearest exemplars of what we often implicitly and now explicitly mean by religion, a matter that I discuss at some length elsewhere. But these and other problems, I think, can be handled in a responsible and cogent fashion.[92]

His comment provides the basis of moving the argument forward to point out that the *definition of "religion" itself has been undergoing a kind of secularization.* I have made this point elsewhere as follows:

> Thus the attitude one adopts towards another "religion" which is different from one's own, becomes crucial to the understanding of religion itself. What is *different* need not necessarily be considered *alien*, and what is alien need not necessarily be treated as an *adversary*. However, because it was the proselytizing religion of Christianity which came in contact with the other "religions" of the world, especially in the eighteenth and nineteenth centuries, the meaning of the word religion came to be moulded by this particular circumstance. This becomes clear form the way in which the word faith, potentially universal in significance as has been so cogently demonstrated by Wilfred Cantwell Smith, has become particularized as faiths and become a virtual synonym for religion with the attendant dichotomization between true and false faiths. A development within the Christian West, however, that of secularism, added another wrinkle, as has already been noticed. This further intensified the adversarial content of the term (as in religion versus science), even as "faith" itself was secularized and lost lexical ground to the word religion.[93]

IV

This extended disquisition on the question of whether Communism is a religion, in the course of which I even had the temerity to quote myself, may have left the reader jaded, and wondering what it was leading to. It prepared the necessary ground for delving into some issues which go to the very core of the theses under discussion in this book.

One such issue would be represented by the question: *what would religious freedom mean in a world without religion?*—to put it paradoxically. Strange as it sounds, we have some historical experience of this. The great ideologies of the first half of the twentieth century set out precisely to create a world without religion. The ideologies of Nazism and Marxism set out in effect to minimize or even eliminate "religious" freedom, as these ideological systems set themselves basically against "religion". They also had the effect of not only stifling religion but transcendence in the public sphere. They did not enlarge freedom in general but restricted it.

These great ideologies were also secular ideologies, but this should not lead us to assume that the secular is necessarily opposed to religion. The workings of secular democracies have demonstrated the compatibility of secularity and religious

freedom. The examples of Nazism and Marxism seemed to suggest that when the secular takes over the religious, then it could result in a constriction of freedom in *both* the realms. History suggests that the opposite also holds true, that when the religious takes over the secular, as in some phases of medieval Christianity, this too may lead to a constriction of freedom in *both* the realms.

History apart, the discussion of Communism as a religion leads to the following question: *do we really need specific guarantees of religious freedom in terms of human rights? Is such freedom not sufficiently protected by freedom of expression?* Article 19 of the Universal Declaration of Human Rights reads:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.[94]

The question then is: does religious freedom need protection independently as a *religion*, apart from the protection offered by freedom of expression, opinion, and conscience?

We have moved in this direction after trying to understand religion in its broadest acceptation. This development is the result of secularization at its most general and at its most individual level. If religion in general is to be understood as a world-view, then the specific contour of religion is flattened at its most general. And if the definition of religion becomes increasingly subjective, then again freedom of expression, opinion, and conscience would suffice to cover it. The Bouchard-Taylor report (2008) in Quebec[95] leans in this direction.

If the dissolution of religious freedom occurred in this way, by it being absorbed in other freedoms, then the situation would be laced with irony. The quest for freedom, from Magna Carta of 1215 onwards, was originally premised on *religious freedom*. The nobles wanted King John to respect the independence of the church, to begin with.

What makes the issue even more interesting is that this conclusion, which we reached on the basis of *global* considerations, has been raised by Winnifred F. Sullivan on the basis of a *local* consideration, as exemplified by the *Warner v. Boca Raton* case, or the Warner case for short. Boca Raton is a city in southern Florida, of about 75,000 residents, in the county of Palm Beach. It was served by a memorial-garden styled cemetery, founded in 1956. It was an aesthetic cemetery in which the grave was meant to be continuous with the natural setting, and placed in such a way as facilitated the mowing of the lawn.[96] It was managed by the City Parks Department, but the sales were handled by the Boca Raton Mausoleum Company. The Boca Raton cemetery regulations required that a memorial was not to "extend vertically above the ground" and was to be "constructed of approved metal or stone containing names, dates, or other engraved lettering used in identification of one or more persons and placed at the head of a lot or plot."[97] Despite this provision, the "city had consistently permitted the engraving of religious and other identifying symbols on the markers."[98] Winnifred F. Sullivan writes:

> If you went to the Boca Raton Cemetery today, you would see that the new section of the cemetery, Section B, is, in fact, not flat and uncluttered, nor has it been for some time. It

> is filled with objects that rise above the level of the grass. It is those objects that are at issue in this case. Notwithstanding the regulations limiting memorialization to flat plaques, a practice grew up in the Boca Raton Cemetery over the course of a number of years from the mid-1980s to the mid-1990s in which individual owners decorated graves above the ground with various objects that did not conform to the regulations. Over that time, almost five hundred such "grave shrines" were constructed. The Warner case was a class action brought on behalf of the owners of these graves.[99]

The "objects" referred to in the passage were "numerous statues, plantings, crosses, Stars of David, and other individually crafted installations," that, with the tacit permission of the city officials had been placed on the individual graves over the past decade or 15 years.[100] Maria Warner and Richard Warner were among the eleven plaintiffs,[101] who "sought a statutory and constitutional free-exercise-of-religion exemption from local cemetery regulations that limit the size and placement of memorials to small flat metal plaques, flush with the ground, giving only names and dates that can be mowed over."[102]

The case came to trial in March 1999, at which, although the plantiffs asserted both U.S. and Florida constitutional claims, the claim was pressed particularly on the basis of the "newly enacted Florida Religious Freedom Restoration Act"[103] (henceforth Florida RFFA), according to which

> (1) The government shall not *substantially burden* a person' *exercise of religion*, even if the burden results from a rule of general applicability, except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person
> (a) is *in furtherance of a compelling governmental interes*t; and
> (b) is the *least restrictive means* of furthering that compelling governmental interest [emphasis supplied].[104]

So the issue boiled down to the question whether the acts of the plaintiffs, in placing those articles on the grave out of love of the departed, were "religious" acts. Judge Ryskamp gave a finding against the plaintiffs that very year and the case is now in appeal.[105] The basis of his decision was that "what the plaintiffs were doing was not really religious or was not really religious in an important way."[106]

Professor Daniel Pals, author of a well-known work on methodology in religious studies,[107] appeared for the City. In the written opinion filed by Judge Ryskamp six months after his oral judgment, the judge repeatedly refers to Daniel Pals' testimony:

> Defendant's expert Dr. Pals provided the most comprehensive and systematic review of the significance of vertical grave markers and religious symbols in the Jewish and Christian traditions. Dr. Pals' careful study concluded that neither the Jewish nor the Christian traditions accord any independent significance to the "verticality" of grave markers or religious symbols.
>
> Dr. Pals' study begins with a consideration of the significance of vertical grave markers in the Jewish tradition. First, Dr. Pals found that the use of vertical markers is neither asserted nor implied in the Torah, the Hebrew Scripture. In fact, the Torah is virtually silent with regard to the issue of grave markers, and those few passages which discuss grave markers do not attach any importance to the type of marker used let alone to whether such markers are displayed vertically or horizontally.

> Second, a study of the classic commentaries of ancient rabbis found in the Talmud revealed that the use of vertical grave markers is not clearly and consistently affirmed in classic formulations of doctrine and practice. In particular, the Talmudic commentaries suggest that use of grave markers is optional and do not accord any significance to the manner in which such markers are displayed.
>
> Third, Dr. Pals found that vertical markers have not been used continuously throughout the history of the tradition. In fact, archeological evidence suggests that ancient Jewish grave sites were often simply painted white to demarcate them.
>
> Finally, Dr. Pals found that vertical grave markers have not been used consistently in recent times. While many Jews of Ashkenazic heritage do place a vertical marker of sorts on the graves of family members, Sephardic and Ashkenazic Jews in Israel make almost exclusive use of horizontal rather than vertical grave markers.
>
> Dr. Pals then considered the significance of decorating graves with vertical religious symbols in the Christian tradition. First, he considered the Bible, the authoritative sacred text of Christianity, and found that the issue of decorating graves with religious symbols is not directly addressed. Moreover, the Bible's passing references to grave decorations do not attach any significance to the manner in which such decorations are displayed.
>
> Second, Dr. Pals studied the writings of Christian theologians and found that they attached little significance to the form of burial memorials. In particular, "they left no mandate that graves be universally marked in any one particular fashion, let alone with a vertical marker or monument."
>
> Third, Dr. Pals fond that the practice of decorating graves with vertical religious symbols has not been observed continuously throughout the history of the Christian tradition. In fact, historically most Christians were buried in common graves with no memorial whatsoever.
>
> Finally, Dr. Pals found that while the practice of decorating graves with religious symbols has increased in modern times, there is no significance to the manner in which such symbols are displayed. In fact, the Catholic Archdiocese often uses horizontal grave decorations in its own cemeteries.
>
> In sum, nowhere in the sacred texts, doctrines, traditions or customs of either the Jewish or Christian faiths can the principle be found that grave markers or religious symbols should be displayed vertically rather than horizontally. The primary objective of grave markers in the Jewish tradition—to demarcate and prevent the grave from being walked upon—can be achieved with either horizontal or vertical grave markers. Similarly, the primary objectives of decorating graves with religious symbols in the Christian tradition—to foster the community's awareness of the deceased and to give witness to the deceased's Christian life—can be achieved with either horizontal or vertical religious symbols. Therefore, the Court concludes that while marking graves and decorating them with religious symbols constitute customs or practices of the plaintiffs' religious traditions, the plaintiffs' desire to maintain vertical grave markers and religious symbols reflects their personal preference with regard to decorating graves.[108]

As a result of Daniel Pals' testimony, a distinction came to be drawn between what was *central* to religion and what was *peripheral* to it, and what is on the periphery and what is at the centre was to be decided in the light of the following questions:

> [I]n the case of any given practice or custom, we can make a reasonable determination by posing four main questions: 1) Is it asserted or implied in relatively unambiguous terms by an *authoritative sacred text*? 2) Is it clearly and consistently affirmed in *classic* formulations of doctrine and practice? 3) Has it been observed *continuously*, or nearly so, throughout the history of the tradition? 4) Is it consistently practiced *everywhere*, or almost such, in the tradition as we meet it in the most recent times [emphasis supplied]?[109]

V

In the preceding section we examined how religious freedom as a concept could not be applied *locally*. In this section we shall examine the case that it may not be possible to apply it *globally*.

The point simply put is whether one needs a *separate* guarantee of religious freedom, on the basis that the guarantee of basic liberties in general suffices to secure it.[110] It is not being challenged that factually freedom of religion is enumerated within the list of basic liberties. The first amendment to the U.S. constitution thus protects "free exercise of religion, freedom of speech and press, the right to peaceable assembly and the right to petition government."[111] Similarly, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) "enumerates the following basic liberties: freedom from slavery, servitude and compulsory labor (art.4); respect for private and family life, home, and correspondence (art.8); freedom of thought, conscience, and religion (art.9); freedom of communication and expression (art.10); freedoms of association and peaceful assembly (art.11) and freedom to marry and found a family (art.12)."[112]

These facts are not at issue. What is at issue is whether religious freedom is not secured by those other liberties in which it is nestled. As James W. Nickel suggests *counterfactually*:

> Suppose that all references to religion in the European Convention were removed, except for the prohibition of discrimination on grounds of religion in Article 14. In a country where this revised version of the Convention was fully respected and protected, people would be protected against all of the familiar forms of religious persecution that imprison people without fair trials. Equality rights would protect them against forms of persecution that would deny them equal citizenship or subject them to discrimination. Political liberties would ensure that they could publicize their grievances, petition the government, take legal action, form political organization, and engage in electoral politics. And the enumerated individual liberties would ensure freedoms such as thought, conscience, expression, movement, association, assembly, and property. Even if freedom of religion is not mentioned, people who fully enjoy all of the listed human rights thereby enjoy freedom of religion.[113]

James Nickel is of the view that "the following nine general liberties, working together, provide full protection for freedom in the area of religion:"[114]

1. Freedom of belief, thought, and inquiry
2. Freedom of communication and expression
3. Freedom of association
4. Freedom of peaceful assembly
5. Freedom of political participation
6. Freedom of movement
7. Economic liberties
8. Privacy and autonomy in the areas of home, family, sexuality, and reproduction
9. Freedom to follow an ethic, plan of life, lifestyle, or traditional way of living.[115]

According to Nickel, the aforementioned nine liberties automatically guarantee religious freedom in the following manner. Thus

(1) *Freedom of belief, thought, and inquiry*, if expanded in line with the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) means that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief."[116] And this "freedom of conscience" then "protects free choice and commitment within the area of people's deepest and most intensely felt moral, social, religious, and cosmological convictions."[117]

(2) *Freedom of communication and expression*, interpreted in line with the International Covenant of Civil and Political Rights (1966), means that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers."[118] In terms of religious freedom, this "permits the publication of religious books and materials. It also allows for religious outreach and evangelism. This fundamental freedom also protects communications that criticize religious doctrines and activities."[119]

(3) *Freedom of association*, read in light of the American Declaration of the Rights and Duties of Man (1948), means that "every person has the right to associate with others to promote, exercise, and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labour union or other nature."[120] Members of a religious tradition are thus free to associate under this provision. It "also protects the liberty to meet with others to form a new congregation, denomination, or religion. The freedom to associate is also the freedom to disassociate. This means that individuals are free to quit religious organizations. It also means that religious groups can exclude people from membership or leadership positions on ground of belief and behaviour."[121]

(4) *Freedom for peaceful assembly,* when elaborated in the light of ICCPR (1966) states that "the right to peaceful assembly shall be recognized."[122] This basic freedom "gives religious groups the liberty to assemble for worship, study, pilgrimages, and protests."[123]

(5) *Freedom of political participation*, again read in the light of ICCPR (1966), states that "every citizen shall have the right and opportunity (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and be elected at genuine periodic elections which shall be by universal and equal sufferage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) to have access, on general terms of equality, to public service in his country."[124] This means that "religious (and non-religious) groups and leaders are free to play a political role."[125]

(6) *Freedom of movement*, is explained as follows in the Universal Declaration of Human Rights (1948): "everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country,

including his own, and to return to his country."[126] This basic human right "gives religious individuals and groups the liberty to engage in movements requisite to association and assembly. It also allows them to flee persecution."[127]

(7) *Economic liberties*, as elaborated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), run as follows:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.[128]

James Nickel applies it in the context of religious freedom as follows:

> Religious people frequently engage in activities such as (1) buying, renting or constructing buildings for religious activities; (2) starting and running religious enterprises such as churches, schools, and publishing houses; (3) hiring employees to serve as religious leaders, editors, teachers, office workers, cooks, and janitors; (4) soliciting donations for religious causes; (5) saving, managing, and spending the funds coming from donations and the proceeds of religious enterprises; and (6) abandoning work or career to pursue religious study and callings. The economic activities of religious organizations are not immune to government regulation. But if these economic activities are entirely or largely blocked then important religious activities will be severely limited.[129]

(8) *Privacy and autonomy covering home, family and sexuality*, can also be interpreted usefully in the light of existing human rights documents. According to the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), "everyone has the right to respect for his private and family life, his home and correspondence."[130] Moreover, according to the ICCPR (1966), "the State Parties to the present Covenant undertake to have respect for the liberty of parents. . .to ensure the religious and moral education of their children in conformity with their own convictions."[131] In terms of religious freedom, these provisions provide parents with "qualified rights to govern the upbringing and education of their children so as to transmit their beliefs and culture."[132]

(9) *Freedom to follow an ethic, plan on life, lifestyle, of traditional way of living*, elicits the following comment from James Nickel:

> Eight of the nine basic liberties are fully recognized in international human rights documents. A general right to act in ways that do not violate the rights of others or disturb public order, however, is not. This is the freedom that J.S. Mill called "liberty of tastes and pursuits." It gives people liberty to live and act in both traditional and unorthodox ways, to continue traditional ways of living, to follow ethical and political outlooks, and to pursue private dreams and visions. Religions should attach great importance to this liberty. Without it, freedom of religious practice is insufficiently provided for by the basic liberties. Liberty of tastes and pursuits is important as a dimension of religious liberty since religious people often engage in unusual activities such as prostrations and baptism by immersion, wear unusual clothes and hats, adhere to non-standard diets, and live communally.[133]

James Nickel then proceeds to refine his argument by coming to a fork on the road, and going down each by turn. This fork is presented by the twin concepts of *weight* and *scope* which are associated with basic liberties. The "*weight* of a liberty or right is its strength or power to prevail when it conflicts with other considerations."[134] Example: "A decision by lawmakers to close a wilderness area to most forms of public access will restrict freedom of movement, but not as significantly as a decision to close an equally large section of a city."[135] The "*scope* of a right is the benefit freedom, power, or immunity that it confers upon its holders."[136] Example: "some kinds of assembly are drunken, riotous, or criminal [which] can be carved out of the scope of freedom to assembly, just as we carve out human sacrifices out of the scope of freedom of religion."[137] From this we can gather that:

> If a right lacks exceptions, that is a matter of scope. If it is absolute, that is a matter of weight or priority. We are often uncertain whether to attribute the failure of a right to dictate the result that should follow in a particular case to an implicit qualification within the right (scope) of to subjection to other considerations (weight).[138]

James Nickel examines four propositions regarding the *weight* of basic liberties, which is his view serve to support his view that religious freedom need not be upheld as a separate right in order to be protected:

> First, to be a basic liberty a generic freedom must be high-priority in many cases, but there are usually areas where its priority is much lower. Second, freedom of religion fits this pattern. Not all liberties connected in some way with religion are of high priority. Third, not all liberties connected in some way with religion require compelling justifications when they are regulated by the government. Finally, in those areas where freedom of religion has very high priority, its weightiness derives from traits that freedom of religion shares with other highly protected liberties.[139]

That all the areas covered by a basic right need not possess the same importance is fairly obvious, and may be illustrated with the help of the right to freedom of assembly:

> Assembly, for example, can occur with many different people in all sorts of places for an immense number of different purposes. It is not plausible to suggest that every kind of peaceable assembly is of equal importance to human liberty or that legal limits on assembly must always be justifiable by a compelling state interest.[140]

An actual case helps illustrate the point. The city of Boulder, Colorado, had an annual Halloween party (dubbed the "mall crawl") which attracted large numbers of people in the downtown pedestrian mall. It was later suspended on account of drunkenness, problems of traffic control, and clean-up costs. This was not considered an issue because of the limited importance of the event. A political rally would be a more important event. Moreover in such situations, "the presence of good options often lessens the importance of access to particular options within the same range."[141]

Nickel then makes the point that such variability in importance also applies to religious freedom:

> Religious activities occur in many different areas of life including the intellectual realm, the area of communications and media, and the physical sphere of movement and traffic.

> Religious activities also occur in the social realm including areas of private space such as the home and family, and the business areas of food service and real estate. The activities associated with religious pursuits are enormously varied, and it is implausible to suggest that they are all equally important as liberties. Worshiping and preaching are religious activities of the highest importance, while driving and plastering are religious activities of lesser importance, even when done within religious organizations or contexts. It would be a far greater infringement of religious liberty to limit the length of worship services than it would be to limit the duration of bus trips.

The third proposition pertains to the fact that "not all liberties connected in some way with religion require compelling justifications when regulated by the government."[142] Nickel makes two initial points in developing this point. One, that "perhaps freedom of thought, and some forms of freedom of expression are immune to regulation in this way," two, that "to describe the freedom to do some kind of action as 'basic' is only to say that proposals to regulate that kind of action bear a heavier than normal burden of justification."[143] Now comes the third and crucial point: that if the importance of such a basic right can vary,

> then we would expect the size of the burden of justification to vary as well. A city may be justified in regulating Halloween street parties in ways that it would not be justified in regulating large political rallies. Here, the difference is probably that political rallies are of greater importance to society and the general welfare than Halloween street parties.[144]

Nickel demonstrates that the same proposition applies to religious freedom as well:

> Since the importance of activities associated with religion varies, so should the burden of justification. It is not plausible to suggest that just because a religious organization or a religiously motivated individual is the actor, the highest standards of justification should be required of any regulations affecting that actor. The fact that an actor in an enterprise is religiously motivated, or is a religious organization, does not transform a bus driver into a priest or make every activity of the bus driver or cook into a religious act for purposes of regulation. If a city ordinance requires all parking areas with spaces for three or more vehicles to be hard surfaced, the fact that this ordinance applies to church parking lots does not by itself mean that a higher standard of justification must apply.[145]

Thus all liberties connected with religion do not have a high priority and require compelling justification, just as is the case with other liberties.

Nickel develops the argument even further, that the "considerations which make religious liberties more or less important as areas of liberty are the same ones that make other common activities more or less important as areas of liberty."[146] He describes four situation in which the importance of a religious activity may be heightened: (1) when that activity is valuable to society "such as religious educational and medical institutions, or religious discourse or learning,"[147] (2) when it is personally important to the participants "the way that communion is to many Christians or that meditative setting is to Buddhists"[148]; (3) when it "does not have substantial cost and dangers to participants and bystanders in the way prayer and religious discussion generally do not,"[149] and (4) when "alternatives to the activity are not nearly as good. For example, holding religious services in homes rather than

in dedicated religious buildings is not nearly as good from the perspective of many religious groups."[150]

By examining these propositions, Nickel draws the significant conclusion that

> This account of what makes religious activities important as areas of liberty also suggests that religious activities will not uniformly be more important than other kinds of activities. The liberty to engage in a certain sort of political assembly may end up having higher priority than the liberty to engage in a particular kind of religious assembly because the political assembly is more valuable to society, is equally or more valuable to its participants, has lower costs and dangers than the religious assembly, and is not as easily replaced by nearly as good alternatives as the religious assembly.[151]

We turn now to the other fork in the road, to the consideration of "scope" as compared to "weight", when it comes to a basic liberty. Nickel makes two initial points in relation to "scope". The first is that scope can be conceived "abstractly" and then "less abstractly" and illustrates this point with the freedom of assembly as follows:

> "Freedom of assembly" is an abstract description of the scope of the right to freedom of assembly. When conceived less abstractly, the scopes of rights generally contain exceptions. If, for example, the constitutional right to freedom of speech does not include protection for speeches made from the visitors' gallery during legislative sessions, this exception could be specified in a full statement of the scope of the right to free speech. The scopes of fundamental rights are typically given broad statements in bills of rights but then defined in greater detail through adjudication and legislation.[152]

The second is the vital point that the various basic rights need to be adjusted to each other:

> The scopes of fundamental rights must be adjusted to accommodate each other. For example, rights to freedom of speech, religious practice, assembly, movement, and political participation require substantial qualification and regulation so that they harmonize with each other and with other important considerations. A system of rights must adjust the scopes and weights of its rights so that they can coexist with each other and form a coherent system. The right to privacy, for example, must be adjusted to coexist as best as it can with the right to a fair trial.[153]

It also has the merit of extending the discussion of rights in terms of "scope" and "weight".

Nickel discusses three aspects of religious freedom under the rubric of scope. The first has to do with minimal religious freedom or religious freedom whose scope is restricted to "freedom of belief and private religious ordinance." Although this "excludes some of the worst forms of religious persecution",[154] and Nickel grants that "it may be more acceptable to doctrinally oriented religions and those whose religious observances can be done in private",[155] he rejects it not only on account of its narrow conception of religious freedom but because "people have general liberties that are violated when they cannot publicly say what they believe, when they cannot move, associate, and assemble as they please within the bounds of respecting the rights of others, when they cannot use their economic assets to promote common goals, and when they cannot practice nonstandard or unpopular forms of living."[156]

The second aspect he addresses is in the form of what he calls the "bilateral" nature of religious freedom—namely, that if freedom protects religion, then it must protect what is not-religion; if it protects belief, it must also protect unbelief, and so on. The third aspect he addresses is the fear that in the absence of a specific category of religious freedom, which he has argued against, the Exemptions from General Duties on religious grounds may not be available. This provision will still operate under his regime, for, he argues, "it is sometimes appropriate to give scientific researchers exemptions from drug laws in order to allow them to study controlled substances. And it is sometimes justifiable to grant indigenous peoples exemptions to fishing and hunting regulations and to allow them to control their own schools."[157] What his position implies is this:

> It is not the case that religious grounds for special exemptions are always more powerful than nonreligious ones. Scientists may have stronger grounds for experimenting with controlled substances than religious believers do. Indigenous peoples seeking access to historically important sites may have stronger grounds for exemptions to wilderness regulations than Christians seeking a place for a sunrise service. People who have survived severe burns to the head and face may have stronger ground for exemptions to bans on headgear than do Jews or Sikhs.[158]

Nickel next makes the point that

> To defend the propositions that special religious grounds are not needed for the defense of religious freedom, adequate secular grounds for the basic liberties must exist. Three justifications are sketched. They are intended to be accessible to people of all faiths and religious outlooks. To that end these justifications rely heavily on common sense and try to avoid highly speculative premises. All these justifications assume that the basic liberties are at least partially justified by the great goods they protect. These goods are not defined narrowly, however, and it is recognized that both individual choice and social traditions are often required to make those goods determinate.[159]

There are these three things according to Nickel which basic freedoms (sans religious freedom) provide, which Nickel regards as his "justifications" for believing that they lead to the realization of religious freedom on its own. The first justification consists of the fact that "[t]he basic liberties provide a basis for fair, stable, and peaceful coexistence between people and groups with very different views of the world and of the human good, thereby reducing the likelihood of civil strife and war."[160] This is important from the point of view of religious freedom because

> This is one way in which basic liberties are valuable to society. Some people may prefer to see their own convictions and practices imposed coercively so as to create uniformity of belief and practice. But in the contemporary world this attitude is a challenge to war, not a basis for fair and peaceful cooperation between people of different outlooks who find themselves mixed together.[161]

The second justification consists of the fact that:

> The basic liberties facilitate the pursuit of happiness—and of many other goals as well. They are useful to everyone because they identify liberties that are all-purpose, that keep open the main roads to goals of the sorts that people are likely to find valuable. Joel Feinberg called this the "fecundity" of some liberties. "Options that lead to many further options can be called 'fecund'; those that are relatively unfecund can be called 'limited'."[162]

Thus one could suggest that "free movement has great fecundity."[163] It leaves us free to visit a place of religious observance, and from there to plan a pilgrimage and so on. But as important as diversity and fecundity, is the feature of autonomy ingrained in basic rights:

> If social and economic arrangements require us to be agents and choosers, they demand the basic liberties. If individuals have to choose and find their jobs, then they need the liberties requisite to choosing and pursuing a career. If individuals have to find their own marriage partners and friends, then they need the liberties requisite to building family and social life. If individuals are expected to be reflective about their ethical, political, and religious views, then they need the liberties requisite to studying, discussing, and evaluating these matters.[164]

This is important from the point of view of religious freedom, for "one cannot provide arguments like these for religious liberty without equally providing ground for other basic liberties."[165] And "if one emphasizes the importance of religious beliefs to the individual, this rationale applies equally to philosophical and ethical commitments."[166]

A crucial point needs to be recognized, as we come close to the end of examining the thesis of James W. Nickel, that basic liberties are sufficient to secure religious freedom. He makes it a point to emphasize both at the beginning and the end of the disquisition, that while "separate enumeration of freedom of religion in national and international bills of rights *may be useful, but it is not indispensable*."[167] And towards the end of the essay he remarks:

> Before attempting to sketch some general grounds for the basic liberties, however, it is important to recognize that religious people often believe that they have special religious grounds for their rights and liberties. Religious people can adequately defend their religious and other liberties without invoking such special grounds, but I do not claim that they must. Here it is helpful to follow Rawls in acknowledging that people come to beliefs about justice and rights from different religious and philosophical perspectives but sometimes succeed nonetheless in forming an "overlapping consensus" on a political conception of justice.[168]

Although Nickel thus accepts that religious freedom could be claimed on religious grounds, he does see some merit in using what we might label his secular option, for the reader might wonder what advantages follow from envisioning religious freedom not as a basic right along with other rights, but as a basic right which is automatically secured when other rights are secured. He lists five such advantages.

(1) According to James Nickel such an approach simplifies our understanding of fundamental rights. He states:

> The biggest advantage in understanding freedom of religion as deriving from the nine basic liberties is that it simplifies and integrates our view of fundamental freedoms. Religious liberty is treated in the same way as artistic and scientific freedom, areas in which basic liberties have important applications because substantial liberty interests are present along with recurring threats to those interests. In this approach, the importance of freedom of religion comes from the fact that the sorts of activities it involves are covered by the most important general liberties.[169]

(2) According to James Nickel such an approach also provides "a broad and ecumenical conception of religious freedom."[170] It is *broad* because it "does not require that we precisely define the boundaries of religion because it equally protects near-relatives of religion such as philosophical and ethical outlooks."[171]

This is a very significant statement from the point of view of our extended discussion of the question whether Communism is a religion or not. This comment by James Nickel would constitute one logical implication of the debate. In fact, the debate was engaged in an extended way precisely to prepare for such an outcome, which is quite revolutionary when one comes to think of it: that religious freedom is best protected by not trying to protect it as such. Quite a Zen conclusion, when one thinks of it.

James Nickel also thinks it is a merit of his approach that it also yields a more *ecumenical* conception of religious freedom, because it

> recognizes that different religions have different emphases. Doctrinally oriented religions can emphasize freedom of belief and the intellectual liberties; proselytizing religions can emphasize freedoms of expression and assembly; socially and ethnically oriented religions can emphasize freedom of association; religious groups that focus on mutual aid or promoting the economic success of members can emphasize economic liberties; and ethically oriented religions can emphasize freedom to live in accordance with one's conscience or traditions as long as that does not harm others or violate their rights.[172]

(3) This approach brings out the comprehensive and interconnected nature of the fundamental freedoms and "avoids the misconception that we have to find all protections of religious activity within a phrase like 'the freedom of exercise in religion or 'freedom of thought, conscience and religion.'"[173]

(4) It does not require that one have a positive attitude towards religion in order to advocate religious freedom. This means that religious liberty is more secure than it would be otherwise, for now "nonreligious people see it, not as a special concession to the orthodox, but rather simply as an application of the liberties and rights that all enjoy."[174]

(5) It provides a sense of increased religious options, for one is free to accept or reject both religious and non-religious options because they are treated on par, and hence the range of the freedom is extended. It is true that most clauses conferring freedom of religion often include the freedom to have a religion or none, but this new approach seems to level the playing field even more effectively, so that

> Just as the value of association is often most significant in contexts where one has a choice about whether to join with other people, the value of religion is often most significant in contexts where one has a choice about what to believe and practice. The believer, the religion shopper, the founder of a new religion, the syncretistic new age seeker, the theologian, the doubter, and the atheist all find shelter in the broad basic liberties.[175]

VI

One final question remains to be addressed: is religion something special?

Theorists of freedom of religion are divided on this point. John Witte, Jr., for instance, argues for the special position of religion when he writes:

> [R]eligion is special and is accorded special protection in the constitution . . .the founders' vision was that religion is more than simply a peculiar form of speech and assembly, privacy and autonomy. Religion is a unique source of individual and personal identity, involving "duties we owe to our creator, and the manner of discharging them," as Madison put it. Religion is also a unique form of public plurality of sanctuaries, schools, charities, missions, and other forms and forums of faith.[176]

This view is criticized by other theorists of religious freedom, such as James W. Nickel. Nickel points out that, from his perspective, "the general grounds for the basic liberties will also be the grounds of religious freedom. No special grounds relating to God's commands, the nature of salvation, or the value of religion are required."[177] As for the claim of religion being a unique source of individual and personal identity, this "overlooks the way in which philosophical and ethical beliefs play a role similar to religious beliefs in constituting a person's identity."[178] As for religion being a unique form of public and social identity, Nickel notes that "many areas of life (including games and sports, education, work, and politics) have elaborate institutional structures associated with them, and these structures are enormously important to people."[179]

The question whether religion is something "special" or not is a highly debated issue in the field of religious studies today and the question of its special nature in the context of religious freedom would reflect this debate. This is an issue which could have enormous repercussions in the field of religious studies. At stake is the very nature of religion itself. One camp involved in this debate consists of those who maintain that the essence of religion is religious, in a way not reducible to anything else; the other camp insists the essence of religion is reducible to something other than religion, such as society, the psyche, biology, and so on. What insulates the present discussion from this vigorous, and at times even bitter, debate is the fact that, for our purposes, it is enough if the followers of various religions *phenomenologically* accept the essence of religion as religious, independently of the determination whether it is really so or not.

VII

This long chapter may now be brought to a conclusion. It acquired this size because the exploration of the legal dimension of religious freedom generated a discussion which offered remarkable support for a major thesis of this book, that the concept of religion entertained in a particular context has enormous ramifications for the corresponding concept of religious freedom. The thesis seems to receive almost startling confirmation from the fact that as the concept of religion got increasingly diluted

in a secular context, and religion came to be defined more and more in terms of conscience, as highlighted in their analysis by Young and Nathanson, it was accompanied by a parallel development, which questioned the very need for a distinct conception of "religious freedom", once other basic freedoms had been secured. The detailed discussion of the question whether Communism is a religion must be placed in this context, as another illustration of how, when the concept of religion gets secularized or dereligionized, the allied concept of "religious freedom" also logically undergoes etiolation.

The question whether religious freedom could be secured without enshrining it as such, as argued by James Nickel, if a point of great theoretical importance in general, and specially for the purposes of our book. It could well have surged to the fore if what I like to call the secular hypothesis had remained challenged. I use the expression secular hypothesis to refer to the view that Europe's past was the world's future, that the secularization of life and society experienced there was supposed to be inevitably replicated in the rest of the world, and that the completion of this process was only a matter of time. History will once again repeat itself, so to say, but on a global scale.

But time ran out on this thesis (proclaiming the inevitable secularization of the globe in the long run) in 1979, when the Iranian Revolution put a huge question mark on its inevitability. Since then the graph of religion in the public square has been steadily rising, virtually all over the world. The level of fundamentalism, and with it the profile in the public square, has risen in the case of almost all of the world's religions. Hence the issue of religious freedom qua religious freedom, which could have faded away (if religion had faded away either altogether from human life, or at least from the public square), is still with us, alive and kicking.

Notes

1. H. Patrick Glenn, "Defining Religion in the Cosmopolitan State", unpublished paper, p. 1.
2. Zagorin (2003).
3. See Adhar and Leigh (2005, p. 17).
4. Taylor (2007).
5. Glenn, op. cit., p. 3.
6. Tribe (1988, p. 1179).
7. Glenn, op. cit., p. 7: "Since then the concept of religion has steadily expanded and less and less confidence is evident in definitional efforts. There have of course been many attempts, ranging from earlier 'substantive' and theistic definitions through structural or institutional definitions (which look to institutions and a body of precepts or rules) to 'functional' definitions (such as that of Tillich's insistence on that which fulfills a role of 'ultimate concern' to people). There are also methodological proposals, such as proceeding in an analogical manner from that which is already accepted as religion, or looking in a Wittegensteinian manner to 'family resemblances'. All of this debate has been unquestionably helpful in throwing light on the difficulty of any definitional effort."
8. Ibid., p. 6.
9. Ibid., p. 7.
10. Ibid., p. 8.
11. Ibid., p. 8.

12. Ibid., pp. 9–10.
13. Ibid., p. 10.
14. Ibid., pp. 10–11. He goes on to say (ibid.): "The decision takes 'generally applicable law' to be a self-evident category, in need of no interpretation, and the decision therefore has the potential of gutting the U.S. First Amendment guarantee of religious liberty of much of its content. In France the French equivalent of *Amselem* was decided in 2006 by the French Court of Cassation in a manner similar to that of the U.S. Supreme Court in *Smith*, the French Court stating that 'la liberté religieuse, pour fondamentale qu'elle soit, ne pouvait avoir pour effet de rendre licites les violations des dispositions d'un règlement de copropriété' [religious freedom, though it may be fundamental, could have the effect of making lawful violations of provisions of condominium rules]. Of the two decisions, the U.S. and French, the French appears most contestable, since in Smith the state legislation was criminal in character, where the public interest is most evident, and it is much more difficult to construct a state or public interest in the internal operation of condominium developments. Both decisions, however, represent a strong and near-irrebuttable presumption that state law admits of no exception to its application on religious grounds."
15. Ibid., p. 11.
16. Ibid., emphasis supplied.
17. Ibid., p. 11.
18. Ibid.
19. Ibid., p. 12.
20. *Syndicat Northcrest v. Anselem*, 2004 SC 47, [2004] 2 S.C.R. 551.
21. See Katherine K. Young and Paul Nathanson, "Defining Religion: A view from the academy", unpublished paper, p. 2.
22. Ibid., 7.
23. *Anselem* at para 39.
24. Ibid.
25. Young and Nathanson, op. cit., p. 4.
26. Ibid., pp. 4–5.
27. Amselem at para 46 and at para 69.
28. Young and Nathanson, op. cit., p. 4.
29. Ibid., pp. 10–11.
30. Ibid., p. 12.
31. Ibid., p. 12.
32. Ibid., p. 13.
33. Ibid., p. 14.
34. Ibid.
35. Ibid., pp. 14–15.
36. Ibid., p. 18.
37. Ibid., pp. 18–9.
38. Ibid., pp. 19–20.
39. Ibid., p. 20.
40. Ibid., p. 21.
41. Ibid.
42. Ibid., pp. 22–3.
43. Ibid., pp. 24–6.
44. Ibid., p. 26.
45. Ibid.
46. Ibid.
47. Ibid., p. 27, emphasis supplied.
48. Ibid., p. 28.
49. Maritain (1964, p. 243) note 1.
50. Zaehner (1967, pp. 18–9).

51. Ibid., pp. 415–16.
52. Ibid., p. 416, emphasis supplied.
53. For more details see Smart (1983, pp. 7–8).
54. Ibid., p. 84.
55. Ibid., p. 96.
56. Ibid., p. 60.
57. Ibid., pp. 60–1.
58. Ibid., p. 116.
59. Ibid., p. 170.
60. Oxtoby (2002, p. 453).
61. Ibid.
62. Ibid.
63. Ibid.
64. Ibid.
65. Ibid., p. 453.
66. Ibid.
67. Ibid., p. 454.
68. Ibid.
69. Stackhouse (2005, p. 6070).
70. *Guardian Weekly*, Feb. 2–8, 2007, p. 23, emphasis supplied.
71. Schlang (1994, p. 160).
72. Cohn (1969, pp. 7–8).
73. Schlang, op. cit., p. 160 note 9.
74. Haussig (1994, p. 798).
75. Smart (1994a, p. 604).
76. Ibid.
77. Ibid.
78. Ibid.
79. Ibid.
80. Ibid., p. 605.
81. Ibid.
82. Smart (1994b, p. 902).
83. Panikkar (1994, p. 892).
84. Ibid., p. 891.
85. Ibid.
86. Ibid., p. 893.
87. Ibid., p. 893.
88. Smart (1994b, p. 902).
89. Panikkar, op. cit., pp. 892–93.
90. Saler (1994, p. 836).
91. Ibid.
92. Ibid.
93. Sharma (1994, p. 592).
94. Brownlie (1994, p. 25).
95. *Commission de Consultation sur les Pratiques d'Accommodement Reliées aux Differences Culturelles*; see *Building the Future: Time for Reconcilliation* (abridged report: Gerard Bouchard, Charles Taylor) (Quebec: Government du Quebec, 2008), pp. 57–9.
96. Sullivan (2005, p. 15).
97. Cited, ibid., p. 17.
98. Ibid.
99. Ibid. The objects can still be seen because the status quo has been maintained, pending appeal, see p. 91.
100. Ibid., p. 2.

101. Ibid., pp. 17–8.
102. Ibid., p. 2.
103. Ibid., p. 22.
104. Cited, ibid., pp. 22–3.
105. Ibid., pp. 90–1.
106. Ibid., p. 103.
107. Pals (2006)
108. Sullivan, op. cit., pp. 233–34, with slight abbreviations. Sullivan offers the following intriguing comment on Daniel Pals' testimony (ibid., p. 103): "All the religion experts had written about religion in various contexts. The contrast between Daniel Pals' trial testimony in the Warner case and his published work is most striking. His 1996 *Seven Theories of Religion*, a widely used undergraduate textbook on religion, summarizes and compares the classic theories of E.B. Taylor, J.G. Frazer, Sigmund Freud, Emile Durkheim, Karl Marx, Mircea Eliade, E.E. Evans-Pritchard, and Clifford Geertz. In the comments he makes on the work of these theorists in the book, Daniel Pals is expansive in considering the possible range of human religious behavior. He finds scholars divided as to how to 'explain' religion but to have a remarkable consensus as to a definition of religion. They seem to agree, he thinks, that religion is 'belief and behavior associated in some way with a supernatural realm, a sphere of divine or spiritual beings.' Pals concludes his book surveying these great theorists of religion with this observation: '[R]eligion in the end seems to be a matter not of impersonal processes that can be known with certainty because they have been scripted by the laws of nature, but of personal beliefs and behaviors that can only be plausibly explained because they have arisen from complex, partly free and partly conditioned choices of human agents.' This description of human religious behavior is similar to those Pals has given in other contexts and very close to those of the plaintiffs' religion experts. It is at odds with Pals' insistence at trial that objects have 'independent religious significance' 'instinctively' understood by all observers and that religious events could be mapped using a center and periphery model. His book is also more in line with contemporary theories of religious motivation."
109. Cited, ibid., p. 147.
110. Nickel (2005, pp. 941–64).
111. Ibid., p. 941.
112. Ibid., p. 942.
113. Ibid., pp. 942–43.
114. Ibid., p. 943.
115. Ibid.
116. Cited, ibid., p. 945, without italics.
117. Ibid.
118. Cited, ibid., p. 946, without italics.
119. Ibid.
120. Cited, ibid., p. 946, without italics.
121. Ibid.
122. Cited, ibid., p. 947, without italics.
123. Ibid.
124. Ibid., p. 947, without italics.
125. Ibid.
126. Ibid., p. 947, without italics.
127. Ibid., James Nickel here specifically cites the *Canadian Charter of Rights and Freedoms*, according to which citizens have the right to "enter, remain in and leave Canada" as well as "qualified right" to "move to, reside, and work in any province".
128. Cited, ibid., p. 948, without italics.
129. Ibid., pp. 948–49.
130. Cited, ibid., p. 949, without italics.

131. Cited, ibid., without italics.
132. Ibid.
133. Ibid., pp. 949–50.
134. Ibid., p. 952.
135. Ibid., p. 953.
136. Ibid.
137. Ibid., p. 952.
138. Ibid.
139. Ibid., p. 952.
140. Ibid.
141. Ibid., p. 953.
142. Ibid., p. 954.
143. Ibid.
144. Ibid.
145. Ibid., pp. 954–55.
146. Ibid., p. 955.
147. Ibid.
148. Ibid.
149. Ibid., p. 955.
150. Ibid.
151. Ibid., pp. 955–56.
152. Ibid., p. 956.
153. Ibid.
154. Ibid., p. 957.
155. Ibid.
156. Ibid.
157. Ibid., pp. 958–59.
158. Ibid., p. 959.
159. Ibid., p. 961.
160. Ibid.
161. Ibid.
162. Ibid.
163. Ibid., pp. 962–63.
164. Ibid., p. 963.
165. Ibid.
166. Ibid.
167. Ibid., p. 941, emphasis supplied.
168. Ibid., p. 959.
169. Ibid., p. 950.
170. Ibid.
171. Ibid.
172. Ibid., pp. 950–51.
173. Ibid.
174. Ibid., p. 951.
175. Ibid.
176. Cited, ibid., p. 943 note 4.
177. Ibid., p. 943.
178. Ibid., p. 963.
179. Ibid., p. 964.

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Chapter 5
What Is Religious Freedom?

The concept of religion was examined in the earlier chapters. It may now be supplemented with a similar scrutiny of the concept of religious freedom. It would be tempting to assume that once the term religion has been examined, the concept of religious freedom could be simply identified as the freedom entertained in relation to religion, however defined. The concept of freedom itself however is a highly textured one, as we shall discover, so that it would be too simplistic to treat the concept of religious freedom as self-evident once the concept of religion has been identified.

I

The concept of religious freedom might be elucidated by adopting three approaches to it in succession: by examining cases which involve *degrees* of religious freedom, then *kinds* of religious freedom, and then *constraints* to religious freedom.

The following instances of differences in religious freedom come to mind as soon as one begins to reflect on the matter. Thus "a person who can observe religious rites but cannot belong to a community of religious believers has a certain amount of religious freedom, but he obviously has, *ceteris paribus*, less religious freedom than the individual who can both observe religious rites *and* belong to a community of religious believers."[1] Similarly,

> A committed Protestant who is forced to behave at certain times as a Roman Catholic behaves still enjoys religious freedom in that he is not forced to be, say, a secularist materialist or even a non-Christian; but he does not have the degree of religious freedom that he would have if he were able to behave consistently as a Protestant, on the basis of a world-view that he genuinely, whole-heartedly *accepted*, and on the basis of the concomitant beliefs, attitudes, values, responsibilities, and special personal relationships. It is actually useful to distinguish *qualitatively* between freedom to do religious things and freedom to act on the basis of a specific religious world-view that one sincerely accepts.[2]

At the other end of the spectrum,

> [W]e see that a person is often regarded as religiously free to the extent that, *ceteris paribus*, she enjoys the same civil rights and privileges and the same social courtesies that are enjoyed by people in her community who do not share her particular religious commitment. If someone is not permitted to own land or to attend a university because she is a

A. Sharma, *Problematizing Religious Freedom*, Studies in Global Justice 9,
DOI 10.1007/978-90-481-8993-9_5,

> Methodist or a Jew, then she is in one important sense not religiously free even though she is not being directly prevented from doing the things that being a Methodist or Jew involves. She would be freer if she were able to do those things without suffering disabilities in the civil and other secular domains of culture.[3]

This previous example allows one to segue easily from a discussion of the *degrees* of religious freedom to *kinds* of religious freedom. For instance, one kind of religious freedom would involve the freedom not to be religious at all. The exercise of this freedom, however, could be complicated by the fact that this rejection of religion may itself take on a religious character. Or there could be, at the other extreme, the kind of religious freedom which involved the "power to do whatever things associated with religion one wants to do, regardless of prudential or moral considerations."[4] But as Jay Newman points out:

> This may well strike one as being as close to the "ordinary" conception of religious freedom as we are likely to get. But think closely. If we prevent a person from practicing a bizarre religious rite that involves the death of thousands of innocent people, we are in a sense restricting his religious freedom; yet we do not *normally* think of religious freedom as involving one's capacity or right to do such a thing. And that is not simply because our religious views differ from those of such a fanatic, but because we believe that religious freedom must always be understood within a wider moral context, one which involves the agent's other interests, the interests of his fellow human beings and other creatures, the interest of civilization, ideals other than freedom (such as justice), and forms of culture or experience other than religion (for important and embracing as religion is, human beings are never *simply* religious). Of course, we can say that preventing the fanatic from carrying out his bizarre rite is a restriction of his religious freedom in one sense of the expression. When one does what one wants, then regardless of whether one's action is prudent or morally right, it is a manifestation of a certain form of personal autonomy. Nevertheless, the case of the fanatic illustrates something that also applies in less extreme cases, that there is nothing especially "ordinary," "basic," or "fundamental" about the conception of religious freedom as doing whatever things "associated" with religion that one *wants* to do.[5]

The discussion of this kind of religious freedom leads naturally to a consideration of the question of constraints on religious freedom. These constraints could take many forms. Political authority would constitute one such constraint, denominational authority yet another and depending on one's age, the question of parental authority could also become important. Some have also drawn attention to the extent to which religious freedom could be constrained by academic and professional authority. Thus

> For example, if a pseudo-liberal professor gives a student low grades solely because he is offended by certain religious assumptions and attitudes that the student brings to her philosophical and social-scientific essays, or even if he simply encourages other students to ridicule their classmate's piety, he may well be abusing authority. So too may be the fundamentalist teacher who uses his position to intimidate or otherwise indoctrinate those who are disinclined to interpret historical and scientific matters as he does.[6]

Similarly, professional authority can also come in the way religious freedom.

> The social influence of academic "experts"—and professional "experts" in general, particularly journalists, broadcasters, physicians, lawyers and economists—is even greater in highly advanced societies than in others, and because it is usually more subtle and indiscernible than most traditional forms of the exercise of political and ecclesiastical power, it

> is often an even more dangerous threat to religious freedoms than they are. For example, in recent years the periodical press in North America has perhaps done more, on balance, to limit the religious activities of individuals and churches on this continent than any group of elected politicians has. I grant, however, that the exercise of authority tends to be more subtle and indiscernible in precisely those situations in which the "internal" dimension of constraint is more significant.[7]

Jay Newman is alluding there to the distinction he draws between "internal" and "external" constraints by developing a clue provided by Aristotle.[8] Internal constraints here may in some measure be understood as internalized constraints. A good example of this is provided by people who self-censor their criticism of a religion. Are they thereby compromising their religious freedom? They would be if they felt that the right to criticize "religion", or a particular "religion", constituted their religious freedom. But what if the votary of another religion looked upon such critiques as compromising his or her religious freedom?

II

One may begin this section by asking: What constitutes religious freedom?—in the light of the foregoing discussion. It is apparent that the concept of freedom can be associated with two elements: the element represented by *choice* and the element represented by *freedom from restraint*. In other words, in order to understand religious freedom one must understand what is meant by freedom. The word freedom "has a broad range of application from total absence of restraint to merely a sense of not being unduly hampered or frustrated."[9] The particular shade of meaning within this broad semantic spectrum one would like to identify for present purposes is the sense that freedom implies "the absence of necessity, coercion, or constraint in choice or action."[10] This definition suffers from a certain lexical dullness we associate with dictionaries, which are sometimes concerned with precision to the point of making the meaning of a word appear cold and lifeless. But the above definition does provide a clue which might enliven our proceedings—by connecting freedom with the concept of *choice*. If one is not allowed to choose one is not free; the more one is allowed to choose the more free one feels, and the more the items over which choice could be exercised the greater the range of freedom. Thus if I am restricted to the practice of only one religion I am not free and the degree of my freedom increases with the number of religions I am allowed to practice. Note however that the number of religions I am allowed to practice may carry a rider with it: that I must convert to that religion to practice it. If such be the case then the more the number of religions I can convert to the greater my religious freedom. If I am a Jew and I can change my religion to Christianity I possess one degree of freedom; and if I may change my religion to either Christianity or Islam I possess two degrees of freedom. Religious freedom thus comes to imply freedom to change one's religion.

Let us now vary the scenario somewhat and imagine a religion which does not ask me to convert to it in order to practice it. Hinduism, for instance, might be said to be such a religion. Then *another* dimension of the meaning of freedom comes into

play, namely, the absence of restriction. The need to convert to a religion to practice it is a kind of restriction. In the case of religions that do not require conversion, it is the sense of the absence of restriction associated with freedom which becomes primary, while in the case of religions which require conversion as a precondition for practicing them, the sense of the presence of choice becomes primary in the context of freedom. It should also be noted that the choiceless awareness which goes hand in hand with any sense of absence of restriction involves greater freedom, than an awareness of freedom of choice which involves overcoming that restriction. In the latter case a separation is presupposed, which is overcome by an act of choice; in the former case no such separation is posited to begin with.

Religious freedom thus can be understood in two senses: (1) the freedom to change (i.e., convert) from one religion to another or (2) unrestricted access to other religions without the need for undergoing such change (or conversions). The second form of religious freedom could also be said to be more free than the first form of religious freedom.

When one reviews the conception of religious freedom as found in the discourse on human rights one notices two striking facts: that it is fully cognizant of the first sense of religious freedom and that it is equally oblivious of the second sense.

Article 18 of the Universal Declaration of Human Rights is considered foundational in many quarters for conceptualizing religious freedom and it might be helpful to review it in the light of the analysis of the word freedom is being subjected to there. The Universal Declaration of Human Rights, which was adopted in 1948, enshrines the right to religious freedom in the following terms:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[11]

In other words, the definition of religious freedom in this Article assumes the presence of religious boundaries and does not cover the case of unrestricted access as a form of religious freedom, although we just saw how this is one clear implication of the concept of religious freedom. I shall revert to this point later.

At the moment I would like to emphasize that, even as it stands, this Article only covers one aspect of religious freedom: the sense of freedom to choose one's religion out of several separate religions. The limited perspective such a concept of religious freedom involves becomes clear in the context of the dialogue of *religions* (as distinguished from the dialogue of civilizations).

The various religions of the world are sometimes classified into missionary and non-missionary religions. The term missionary religions is used in this context to refer to those religions which actively seek converts, such as Christianity and Islam. The term non-missionary religions is then used to refer to religions which, while they may occasionally accept converts, do not actively seek them. Hinduism and Judaism are usually referred to as non-missionary religions, specially in their classical formulation.[12]

In terms of this distinction, Article 18 of the Universal Declaration of Human Rights could be said to contain a bias in favour of the missionary religions inasmuch as it specifically states that freedom of religion as a human right includes freedom to *change* religion or belief. From the point of view of the non-missionary religions, however, the right of freedom of religion would equally consist of the right to *retain* one's religion specially in the face of missionary pressure to change it. This right is not specifically articulated in Article 18, although it could be argued that the situation is suitably modified in the version of this Article found in the International Covenant on Civil and Political Rights[13]:

ICCPR (1966)

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right *shall include freedom to have or to adopt a religion* or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his f*reedom to have or to adopt a religion* or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.[14]

According to those who argue for the status quo, the revised provision in the ICCPR (1966) takes care of the issue. Moreover, the ICCPR represents the legally binding and formal position, whereas the Universal Declaratin of Human Rights was aspirational in character, so it can be claimed that provision which matters most does contain the more nuanced formulation. One could, of course, argue that this more nuanced formulation should have been part of the provision in the Universal Declaration of Human Rights itself, to avoid the kind of misunderstanding which has been associated with it. But the response to that would be that while it is to be regretted that it is not part of the original provision yet the situation has now been redeemed.

On the face of it this seems a persuasive point until it is realized that this change was introduced to accommodate the objections of another religion belonging to the Western tradition, namely Islam, which also accepts only exclusive religious affiliation. John Witte Jr. articulates the point well:

> Permit me just one example of the benefits of such theological discourse for modern formulations of religious rights—namely, the conflict between Christian and Muslim groups over the right to change one's religion, to convert. As we saw, most Western Christians believe

> in relatively easy conversion into and out of the faith. Most Muslims believe in easy conversion into the faith but allow for no conversion out of it. How can these juxtaposed rights claims be balanced?[15]

The word "to have or to adopt" was substituted for the more stringent "change", because changing one's religion in Islam attracts the charge of apostasy, which is punishable by death.[16] This made it difficult for some Muslim countries to accept the wording in the Universal Declaration of Human Rights.

If this explanation of the modification in the wordings of the two articles is correct, then we have not one but two paradoxes to deal with. The first paradox is that the modification has resulted from objections from a Western religious tradition which carries exclusive affiliation to the point that it makes leaving it punishable by death. In this sense it could be claimed the *most* exclusive religious tradition, interacting with other exclusive religious traditions, secured the modification. It has *not* resulted from the impact of the non-Western traditions and therefore really does not reflect the accommodation of their perspective in the documents dealing with human rights. The other paradox is that although the modification was made by Islam in order to accommodate Islam, to a certain extent at least, the accommodation does bring the provision closer to the position of Asian religions.

Nevertheless, despite the paradoxical manner in which the outcome may have come about, the question remains: does it not adequately take into account the concept of religious freedom as elaborated from the perspective of Asian religions?

There are two difficulties with the situation as it exists. The first is procedural and the second substantial. Human rights discourse seems to have been grudging and reluctant in its embrace of the Asian position. John Witte Jr. again notes perceptively:

> International human rights instruments initially masked these conflicts, despite the objections of some Muslim delegations. Article 18 of the 1948 Universal Declaration included an unequivocal guarantee: "Everyone has the right to freedom of thought, conscience, and religion; this right includes the right to change his religion or belief. . ." Article 18 of the 1966 International Covenant on Civil and Political Rights, whose preparation was more highly contested, became more tentative: "This right shall include to have or adopt a religion of belief of his choice. . ." The 1981 Declaration on Religious Intolerance and Discrimination Based Upon Religion and Belief repeated this same tentative language, but the dispute over the right to conversion contributed greatly to the long delay in the production of this instrument. Today, the issue has become more divisive than ever.[17]

Although it is true that the expressions such as "to have or to adopt" have made their appearance (even if in reaction to a tradition which also believes in exclusive religious affiliation), the stronger phrasing represented by the word "retain" is largely absent. This almost nominal point, however, leads to a substantial one, that the missionary religions have been using the current concept of religious freedom current in human rights discourse to justify proselytization:

> Taking the Indian subcontinent as an example. . .the principle of religious freedom, as it is generally understood in the West, is neither neutral nor universal, but privileges Christian and Muslim understandings of religious identity as centering on belief. For Hindus, Jains, and Buddhists in India, for whom religion is conceived of as the ancestral tradition of a

> community, religious freedom becomes the right to practice faith collectively without interference from proselytizing faiths. For some, therefore, religious freedom means the *freedom of conversion*, for others, it means *freedom from conversion*.[18]

Here we see the original ambiguity of the expression "religious freedom" at play again. An early ambiguity turned on the question of whether religious freedom meant freedom *from* religion or freedom *for* religion. Now the faultline, as a result of the activities of the proselytizing religions and resistance to these by the non-proselytizing religions has highlighted the following ambiguity: does religious freedom mean *freedom of conversion* or *freedom from conversion*.

From this it seems to follow, unfortunately, that the changes in the human rights documents, while they signal a relatively greater accommodation of the concept of religious freedom found in the Asian religions, although introduced through the Islamic backdoor, are merely cosmetic and the rhetorical force of human rights discourse is still not moved out of the groove of exclusive religious affiliation. This tilt is in evidence in the following provision of the ICCCR (1966) cited earlier:

> Freedom to manifest one's religion may be subject to only such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedom of others.

Western human rights discourse has yet to fully accept the fundamental right of someone *not* to be made an object of proselytization (in the process of manifesting a religion) as a fundamental religious freedom.

In the context of the dialogue of civilizations, however, an even deeper problem can be identified with the concept of religious freedom as articulated in Article 18. The use of the word "religion" therein is Western in its orientation. "When the Christian world of the West viewed other traditions, it sought to define them in terms parallel to the way it understood its own Christianity. The Christian historical self-understanding imposed three of its own predilections on what it described."[19] These three predilections consist of the assumption (1) that every religion possesses a creed; (2) that every religion contains an "institutional distinction between the sacred and the secular" and (3) that *one could only belong to one religion at a time*.

It was, however, discussed in detail in a previous chapter and will also be elaborated in a subsequent chapter as to how religion is conceptualized in Asian religions and cultures, in a way which is quite consistent with multiple religious affiliation.

It could be maintained that this concept of religious freedom, consisting of the freedom of simultaneous multiple religious affiliation, does not seem to be an integral part of the concept of religious freedom as reflected in Article 18 of the Universal Declaration of Human Rights. Just as the dialogue of religions revealed a *limitation* of the formulation of the concept of religious freedom in the Article, the dialogue of civilizations reveals a glaring *omission*. If the argument made so far holds good then this limitation may have to be removed, and the omission corrected, if religious freedom is to be comprehensively understood as a human right in an interreligious and intercivilizational context.

What this means in the present context is as follows. The concept of freedom can be understood both as implying the freedom to choose one item, as well as the

freedom from the need to do so. Freedom of property means that I can own *many* items of property at the same time, as much as it means that I am free to sell any *one* item at any time. The existing conceptualization of religious freedom, which may be described as Western at the present moment for want of a better word, seems to emphasize the element of freedom to choose a religion but seems to ignore the other element of unrestricted access to religions without the need to convert.

III

It is thus clear that the concept of religious freedom could convey two vectors of meaning, one more in keeping with a Western concept of religion and another with an Eastern concept of religion and further that the concept of religious freedom could be enlarged and enriched by semantically accommodating the Eastern sense as well.

It might be possible to go even further if we associate the idea of not only (1) freedom of choice and (2) freedom from constraint but also of (3) increased opportunities, with religious freedom. Scope for understanding the concept along these lines is created by the following observations of Jay Newman:

> Although we may not think of it as such, absence of opportunity represents a very significant constraint in the sphere of religion. For example, if one lives in a part of Asia or Africa where one has little if any contact with Christians or Christian literature, then as Christian missionaries are given to reminding us, one is lacking a certain kind of freedom: if one is not actually being deprived of the possibility of spiritual freedom, then one is at least being deprived of the possibility of doing certain religious things that, were one offered a choice, one might elect to do. In a certain sense one is not free to the extent that one is not able to choose from among more alternatives than one now is. The more alternatives open to one, then *ceteris paribus*, the freer one is.[20]

Such a perspective on the question of religious freedom helps to widen and deepen our understanding of it in no small measure. To begin with, it enables us to see missionary activity in a new light. Missionary religions, by introducing new options and new opportunities in a given religious situation, enhance its potential for religious freedom. One must distinguish here between proclamation and proselytization. By *proclaiming* their religion they enhance religious freedom of others, if by *proselytizing* they arguably limit the religious freedom of others.

The point can however be developed even further. The above perspective implies that by increasing an awareness of religions options in a given situation, religious freedom is enlarged. Such a development ties in with the third element in the definition of freedom, which emphasizes *opportunity*, just as the earlier perspective emphasized *choice* and *absence of restriction*. This enables us to see the study of world religions in the academic curricula around the world in a new light—as a step which enhances the measure of religious freedom in the world.

One may finally put this discussion in a historical perspective as a way of making it more persuasive. Just as it was possible to relate the neglect of the second sense of freedom (that of unrestricted access) in human rights discourse to its indifference

to Eastern religions, it may be possible to relate the neglect of the third sense of religious freedom to the secular bias of human rights discourse, which saw religion as an area which would atrophy with the march of civilization.

IV

One must also finally consider the possibility that there may be no need to speak of *religious freedom* as such and that it is fully comprised within concepts of freedom of belief, speech and action. The current tendency in human rights discourse is to resist this suggestion. The Oslo Coalition on freedom of religion or belief recently published a massive tome entitled *Facilitating Freedom of Religion or Belief: A Deskbook.* It contains the following statement.

> As the enumeration of the core elements of freedom of religion or belief makes clear, this is a complex right, containing sub-elements that overlap with a variety of values protected by other human rights. This has led to tendencies to interpret freedom of religion or belief through the conceptual filter of other norms to which the various sub-elements of religious freedom are linked, such as equality or freedom of expression or the rule of law. Some have gone even further, recommending that freedom of religion be reduced to or supplanted by one of these other norms. These tendencies impoverish our understanding of freedom of religion or belief and fail to understand the extent to which the differing values constitute a seamless web crucial as a whole to protecting the fragile yet vital interactions of belief, action, and community that constitute belief systems.[21]

An opposite perspective is presented by Winnifred Fallers Sullivan in the following remarks, with which she concludes her book with the challenging title: *The Impossibility of Religious Freedom*:

> The right to freedom of religion claims a right to transcendent fidelity to a life outside the state and outside oneself. For some, the right to religious freedom is therefore to be enthroned as the first right in an absolute sense, the right without which the others are meaningless. Much is made, for example, by some American theorists, about the fact that the religion clauses are listed first in the Bill of Rights, although there is little evidence that the placement was intended by the drafters to have any significance. While the question might be asked as to whether all human "rights" demand a transcendent reference, the guarantee of a right to religious freedom is almost perversely insistent on the necessity of transcendence. While the argument can be made that all rights depend on a religious understanding of the person, the right to religious freedom makes that argument a necessary part of law. Only then can the resulting discrimination against those who claim to have no religion be justified. That is the best argument for legal guarantees of religious freedom. But as with other rights against the state, such rights are paradoxically dependent on state enforcement. The evidence in the *Warner* case could be understood to suggest that what is sought by the plaintiffs is not the right of "religion" to reproduce itself but the right of the individual, every individual, to life outside the state—the right to live as a self on which many given, as well as chosen, demands are made. Such a right may not be best realized through laws guaranteeing religious freedom but by laws guaranteeing equality.[22]

Notes

1. Newman (1990, p. 171).
2. Ibid.
3. Ibid.
4. Ibid., p. 172.
5. Ibid.
6. Ibid., p. 179.
7. Ibid.
8. Ibid., p. 178: "At the beginning of Book III Aristotle makes some famous distinctions that have greatly influenced subsequent philosophical reflection on freedom and responsibility. He asserts without qualification that actions are compulsory when the cause is in the external circumstances and the agent contributes nothing. But he recognizes that in many important cases compulsion is not as obvious as in the case of someone being carried somewhere by a wind. He allows then that some acts are 'mixed,' for while not involuntary in the strictest possible sense of the word, they are involuntary in another sense, for people would not choose to do such acts unless they were under some significant pressure. Aristotle recognizes that it is often difficult to determine the degree of an agent's responsibility under such circumstances. Still, we can see that the 'internal' dimension of constraint is more significant in the case of a person who acquiesces to authority because of fear of loss of social position than in the case of a person who acquiesces to authority because of torture. Even in the former case, however, we must not forget that the political or denominational leaders' repressive exercise of authority is an important 'external' dimension of the constraint limiting the agent's activity. 'External' constraint is present even when the political and denominational leaders limit their subjects' activities through subtle forms of indoctrination and conditioning, although when no pain is involved in these processes, one might be inclined to believe that the constraint is primarily 'internal' or even to agree with Aristotle that there is no compulsion at all."
9. *Merriam-Webster* (2002, p. 464).
10. Ibid.
11. Brownlie (1994 [1971], p. 25).
12. See Burke (1996, p. 6).
13. Brownlie (1994 [1971], p. 13).
14. Ibid., p. 132, emphasis supplied.
15. Witte (1999, p. xvi).
16. See Tahzib (1996, pp. 84–7). I am indebted to Professor Brian D. Lepard for this reference.
17. Witte Jr., op. cit., p. xvi.
18. Hoehler-Fatton (2001, p. 256).
19. Oxtoby (1996, p. 488).
20. Newman, op. cit., p. 181.
21. Lindholm, Durham and Thazib-Lie (2004, p. xi).
22. Sullivan (2005, pp. 158–59). Parts from this quotation have also been cited elsewhere.

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Chapter 6
The Possibility of Religious Freedom

I

The expression "religious freedom" is frequently invoked in contemporary discourse. For instance, the U.S. Commission on International Religious Freedom (or USCIRF for short) was constituted in 1998 in the United States as part of the International Religious Freedom Act. Thus the concept of religious freedom is no longer merely a matter of theory but has also acquired the status of a policy, for the commission's "primary responsibilities are to make foreign policy recommendations to the President and the Congress related to the status and impact of freedom of religion or belief around the world." According to a recent announcement, the U.S. Commission on International Religious Freedom, "a bipartisan independent federal commission created by Congress in 1998, is the only independent governing body in the world focused primarily on monitoring and advancing the internationally recognized freedom of thought, conscience, religion or belief and related human rights. It is also the only international human rights commission in the United States government."

It is clear therefore that the concept of religious freedom plays a vital role in human rights discourse and has even been institutionalized in the form of the USCIRF. Closer home, the recent controversy surrounding the presence of the Bengali author Taslima Nasreen in India, whose writings have provoked the wrath of Muslims in Bangladesh and now in India, may also be couched in the idiom of religious freedom. Her freedom to express her religious views constitutes one side of the debate and how its exercise impinges on the freedom of other Muslims pursuing their faith, without having it impugned (at least in their own perception), constitutes the other. It is not my intention to either examine the working of the United States Commission on International Religious Freedom nor is it my intention to debate the case for or against Taslima Nasreen. I have alluded to them to draw attention to the importance and contemporary relevance of the exercise we are engaged in at the moment, namely, that of interrogating the concept of religious freedom. It seems to me that the intellectual attention bestowed so far on this concept is hardly commensurate with its importance.

A. Sharma, *Problematizing Religious Freedom*, Studies in Global Justice 9,
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II

What is religious freedom? When the issue is framed and probed in this way, then the answer usually put on the table is in the form of the provisions pertaining to it, as found in the documents relating to human rights. One such key provision is Article 18 of the Universal Declaration of Human Rights, which was adopted by the United Nations on December 10, 1948. The United Nations had close to sixty members at the time, of which half a dozen abstained. The key provision, which has been cited earlier, runs as follows.

***Article* 18**

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[1]

The fact that Saudi Arabia abstained on account of the fact that this provision allowed one to change one's religion was not unexpected, because according to the classical legal tradition in Islam, the penalty for apostasy is supposed to be death. But while the response of Saudi Arabia may not have been unexpected, that response possesses an unexpected *theoretical* significance, for it highlights the fact that our *concept of religious freedom cannot be divorced from our concept of religion*. For the Wahhabi school of Islam, as for almost all Muslims, Islam is the final and perfect religion. In the face of such a position, religious freedom could hardly consist of giving up such a religion. Religious freedom could possibly consist of allowing other religions to exist alongside Islam, but in view of Islam's self-perception of itself as the final perfected religion, religious freedom could hardly include the freedom to give it up. This is one important theoretical point which emerges from examining the Saudi case, that our concept of religious freedom cannot be divorced from our concept of religion. The second important point pertains to the light the Saudi case sheds on the nature of the relationship between the theory and practice of religious freedom. The Universal Declaration of Human Rights embodies general aspirations, which are meant to be given concrete shape in the form of covenants to which the member-states of the United Nations are signatories. For various reasons, two sets of covenants were developed on the basis of the Universal Declaration of Human Rights, namely, the International Covenant on Civil and Political Rights[2] and the International Covenant on Economic, Social, and Cultural Rights.[3] Article 18 of the Universal Declaration of Human Rights appears in the International Covenant on Civil and Political Rights as follows. This provision has also been cited earlier.

***Article* 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.[4]

It is worth noting that the freedom to "change" one's religion now appears as the right to "have or adopt a religion." Please note that the expression "to change" is stronger in its connotation as implying a break with the previous religion one was following, than "to have or adopt." This latter formulation is more acceptable in Islamic terms, in the sense that it is *giving up of the religion* which attracts the charge of apostasy in Islam rather than adopting something alongside. For one can *adopt* without abandoning what one has, but one cannot *change* without abandoning what one has. One can adopt another child without giving up one's own, but if one changes, i.e. exchanges one child for another, then one has to give up one's own.

This modification makes it clear that *religious freedom is not something static but dynamic* and takes on new shape under the influence of forces which impinge on it.

The aim of this book is to problematize religious freedom, as its title suggests, because although the term "religious freedom" gives the appearance of being self-evident, it does not turn out to be unambiguous upon inspection. While its denotation seems simple enough, its connotation does not seem to be free from complications. Who is not for "freedom" in our day and age, in which that word is invoked talismanically all over the world. To be sure, the first impression the expression "religious freedom" conveys is wonderfully liberating—either in the sense that one is freed from the trammels of religion, or in the sense that one can engage in the untrammeled pursuit of it, the former sense probably appearing self-evident in France and the latter in the U.S.A. And right there we get a glimpse of the problematical nature of the expression "religious freedom", although it is resolved easily in this case by pointing out that both the senses are covered by the expression "religious freedom", both freedom *from* religion and freedom *for* religion.

Not all issues associated with the expression "religious freedom", however, are subject to such easy resolution, because even the example given above reflects two distinct attitudes to religion, and thus gives rise to two distinct conceptions of religious freedom. In its own way, then, this case exemplifies the thesis of the book that the meaning of the term "religious freedom" depends crucially on our understanding of the meaning of the word religion and our attitude towards it.

There is a possible counterpoint to this view. It has been claimed that a formal definition of religion is not even necessary for dealing with issues of religious freedom as they arise in law, a fact which goes against the grain of the thesis on the face of it. This objection, however, does not seem to bear scrutiny. The actual legal cases, when examined, reveal that the question of the definition of religion surfaced

in them and had to be addressed by the courts. Moreover, the decision of the court was influenced by the definition or description of religion it chose to accept.

It would therefore seem that the thesis, which links the concept of religious freedom with the concept of religion, is defensible. The fact that as the definition of religion became less "religious", the concept of "religious freedom" tended to virtually merge with that of "freedom of expression" or with other basic freedoms, as illustrated in the extended discussion in Chapter 4, lends credence to this view.

In the rest of the Chapter 1 would like to build further on these two insights: (1) that the concept of religious freedom cannot be divorced from that of religion and (2) that the concept of religious freedom is something dynamic and not static.

III

If the discourse on human rights claims to be universal, then it must take concepts of religion and the corresponding concepts of religious freedom other than the Western into account, in order to be truly universal. There are two ways in which such universality may be achieved: either by suppressing diversity or by acknowledging it. Thus one way to achieve universality is through uniformity. It could be argued that this was the route taken in the Universal Declaration of Human Rights, which privileged one understanding of religion, a secular Western one, according to which one can only belong to one religion at a time, although one could change this one religion to which one belonged. This arrangement appears isomorphic with serial monogamy—according to which one can only have one legally wedded partner at a time, although one could change the partner over time. Another way of achieving universality, however, is through identifying commonality rather than imposing uniformity. The difference between the two may be illustrated as follows in terms of religious freedom. If, for instance, Article 18 ran only as follows: "Everyone has the right to freedom of thought, conscience and religion. . .and the right. . .either alone or in community with others and in public and private, to manifest his religion or belief in teaching, practice, worship and observance," that is, if the clause "this right includes freedom to change his religion or belief" had been excluded, then hardly any religion would have objected, for it would have confirmed universal religious freedom for everyone, in their *common* acceptance of their own individual religion. It is the clause which pertains to the right to "change," which opens up the possibility of a different kind of universalism: everyone changing their religion so that they all adhere to the same religion.

But let us take the article as it exists now into account. If we adhere to the commonality approach, then the concept of religious freedom, which undergirds Article 18 as we know it now, should be such as accommodates, as far as possible, the different concepts of religious freedom generated by different concepts of religion within the framework of its provisions.

Such differences in concepts of religion, and the corresponding concepts of religious freedom, can be identified if we review the religions of the world in terms of their approaches to (1) religious conversion, and (2) religious participation.

IV

The various religions of the world can be classified broadly into two categories in terms of their attitude to religious conversion, on the basis of whether they actively seek, or do not seek, converts. According to this criterion, those religions which actively seek converts may be called missionary religions, the term non-missionary religions being reserved for those who don't do so. Buddhism, Christianity and Islam would then qualify as missionary religions, in terms of this classification, and Judaism, Zoroastrianism and Hinduism would fall in the non-missionary category. This is well known. It also needs to be recognized that the Primal Religions of the world, whose followers constitute approximately 4% of the world's population, also belong here, as noted by John Mbiti. In the passage I am about to quote, he uses the term universal in the Western sense of the term. This is what he says:

> Traditional religions are not universal: they are tribal or national. Each religion is bound and limited to the people among whom it has evolved. One traditional religion cannot be propagated in another tribal group. This does not rule out the fact that religious ideas may spread from one people to another. But such ideas spread spontaneously, especially through migrations, intermarriage, conquest, or expert knowledge being sought by individuals of one tribal group from another. Traditional religions have no missionaries to propagate them; and one individual does not preach his religion to another.
>
> Similarly, there is no conversion from one traditional religion to another. Each society has its own religious system, and the propagation of such a complete system would involve propagating the entire life of the people concerned. Therefore a person has to be born in a particular society in order to assimilate the religious system of the society to which he belongs. An outsider cannot enter or appreciate fully the religion of another society. Those few Europeans who claim to have been "converted" to African religions—and I know some who make such fantastic claims!—do not know what they are saying. To pour out libation or observe a few rituals like Africans, does not constitute conversion to traditional religions.[5]

Thus the concept of religion in Primal Religions also does not involve conversion. Therefore, in these religions as well, religious freedom would consist of the freedom of not having to change one's religion. One should be free *not* to convert, and one should remain free from any pressure to convert. In other words, freedom of religion consists as much of the freedom to *retain* one's religion as to change it, although only the latter is specifically mentioned in Article 18 of the U.N. Declaration. In the light of the fact that so many religions of the world are non-missionary, the relevant part of the Article could have read:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to *retain or* to change his religion or belief. . .

This suggestion is not as contrived as one might be inclined to think. Section 147 of the Penal Code of the People's Republic of China (PRC) reiterates Article 26 of the 1982 PRC Constitution (still in force) and also refers to Article 4 of the Constitution in affirming: "each nationality has the freedom to retain or change its customs and habits." The Chinese intuition here is salutary, although presented not in terms of religion but customs and habits, and not in relation to individuals but rather nationalities.[6]

It is true that Article 18, as it appears in the International Covenant on Civic and Political Rights, uses the expression to “have or adopt” rather than “change” and I leave it to you to decide whether this phrasing suffices to cover the point being made here. It seems to me that the expression “have or adopt” does not convey the point with the required clarity and force the way word “retain” does, which does appear in some U.N. documents.

This then is one way in which the concept of religious freedom may have to be revisited, in the light of the insight that the our concept of religious freedom cannot be divorced from our concept of religion.

A second way in which it may have to be revisited is suggested by an examination of the concept of religious participation embedded in a particular concept of religion. A distinction may be drawn in the context of religious participation between *exclusive religious participation and multiple religious participation*. Some religions insist on exclusive adherence and prominent among these are Judaism, Christianity and Islam—the so-called Abrahamic religions. One cannot be a Jew, a Christian and a Muslim at the same time, notwithstanding such groups as “Jews for Jesus.” Other religions such as Hinduism, Buddhism, Jainism, Sikhism, Confucianism, Taoism, Shinto, and the Primal Religions, by and large, allow for dual or multiple religious participation. It is when the religions of the world are arranged in this fashion that the real significance of the Article 18 of the Universal Declaration of Human Rights comes into view, when it elaborates that the right to religious freedom “includes freedom to change” one’s religion or belief. For it is in order to follow Judaism, Christianity and Islam that one must change “one’s religion.” One does not have to “change” one’s religion to belong to Hinduism, Buddhism, Jainism, Sikhism, Confucianism, Taoism, Shinto or Primal Religions. Here “initiation” should not be confused with “conversion.” One could be initiated into these religions if one wanted, but it does not involve conversion in the sense of having to consciously abandon one’s previous religious connections. It is here that the Western bias of this Article may be said to stand out rather starkly, for Judaism, Christianity and Islam are Western religions.

The point can be developed further in the light of the distinction introduced earlier between missionary and non-missionary religions. “Religious freedom” is often invoked, in the current discourse on human rights, to castigate non-missionary religions for resisting the conversion of their members by the missionary religions, as compromising religious freedom. The pressure point comes to rest on the non-missionary religions and on their reluctance for allowing “conversion” to take place because they are used to multiple religious participation and do not see the need for such conversion from two points of view. They see no need to change one’s religion as most of them are not missionary religions themselves, nor do they feel the need for anyone to “convert” to the missionary religions if such a religion appeals to one, on account of their acceptance of multiple religious participation. If these non-missionary religions became more assertive, then the pressure point would come to rest on the missionary religions, for then some non-missionary religions, in keeping with their acceptance of multiple religious participation, could demand that they

have full access to the rites and rituals of the missionary religions without having to convert to them as part and parcel of the exercise of their own religious freedom. In such a case, *not* offering the bread and wine in the Eucharist to unbaptised Hindus or Buddhists would be seen as compromising the religious freedom of these Hindus and Buddhists. And so on. This discussion leads one to propose the following addition to the Article 18: ...“*without discrimination.*” The whole article would then read as follows:

> Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief, and freedom, either alone or in community with others and in public and private, to manifest his religion or belief in teaching, practice, worship and observance *without discrimination* (i.e. *without discriminating against others*).

V

We have so far investigated one element in the expression “religious freedom” in some detail, namely, “religious,” by once again examining the implications our changing understanding of the term religion has for religious freedom. It is now time to interrogate the term freedom itself. What is freedom? What constitutes freedom? May I be so lowbrow as to cite the definition of this term from the *Merriam-Webster’s Collegiate Dictionary*. I think we will be pleasantly surprised by the outcome. The good book defines freedom as follows:

1: The quality or state of being free: as

- a: the absence of necessity, coercion, or constraint in choice or action
- b: liberation from slavery or restraint or from the power of another...
- c: the quality or state of being exempt or released usually from something onerous
- d: EASE, FACILITY
- e: the quality of being frank, open or outspoken
- f: improper familiarity
- g: boldness of conception or execution
- h: unrestricted use

2: a: a political right
   b: FRANCHISE, PRIVILEGE[7]

If we analyze these statements it soon becomes clear that the concept of freedom involves the twin concepts of minimization of restriction and the maximization of options. These are in fact two sides of the same coin. If an animal is bound to a pole, then the less the restriction on the movement that is, the longer the rope, the freer the animal may be said to be. Thus as restriction is minimized, freedom is enlarged. Similarly, let us think of a patient who has just had surgery, which involved abstention from food. The patient is first allowed to drink liquids. Then, as a next

step, the patient is allowed to eat fruits. Earlier on the patient had only one dietary option, now the patient has two options. When she is allowed to eat light food, the range of her options is enlarged further. In other words, the greater the number of options, the greater the degree of freedom. When finally the patient is allowed to eat any item of food the patient likes, the patient's options are maximized and so is the patient's freedom.

The concept of religious freedom, as it prevails in human rights discourse, arguably represents the understanding of freedom which emphasizes freedom as freedom from restraint or restriction. Thus a person is allowed to change his or her religion, thereby removing any restriction which might have hindered such an exercise of freedom in the past. If, however, we look upon freedom as involving the maximization of the range of options available to a person, then a slightly different perspective begins to emerge. Normally we are aware mainly of the existence of our own religion and perhaps of a few allied ones. Thus a Muslim will possess a certain amount of knowledge about his own religion and may also possess a nodding acquaintance with Judaism and Christianity. Similarly, a Hindu may possess some knowledge about his own tradition and may also be acquainted in some measure with the allied religions of Buddhism and Jainism. In such a scenario, the choices open to both the Muslim and the Hindu are rather restricted because both of them do not possess an adequate knowledge of other world's religions for these other religions to appear as live options before them. If, however, both the Muslim and the Hindu became better acquainted with the other religions of the world, then the range of religious options available to them will be considerably extended. This is how our perspective shifts if we think of freedom as consisting of providing maximum choices, rather than as merely minimizing restrictions. Under this revised concept of religious freedom, religious freedom would be maximized if every human being became acquainted with the religious traditions of humanity reasonably well, to consider all of them as live options. Such an understanding of religious freedom would then involve providing all members of humanity with the knowledge of either all or at least as many religions of the world as possible, so that the options available to a human being, any human being, are maximized. According to the logic of this argument, a course in world religions in the curriculum around the world would maximize religious freedom by enlarging the range of religious options available as far as possible. If one wanted to maximize religious freedom, then this would be the way to go.

VI

One might now bring matters to a conclusion. It was recognized early in the chapter that religious freedom is a dynamic concept. If we approach the matter in this spirit then we can offer two conclusions to the academic and faith communities as a result of the exercise we have engaged in this book. The first is that a revised version of Article 18 of the Universal Declaration of Human Rights could be proposed on the basis of the formulation that the concept of religious freedom cannot be divorced

from the concept of religion. A revised version of Article 18 would then read as follows:

> Everyone has the right to freedom of thought, conscience and religion, this right includes freedom *to retain* or to change one's religion or belief, and freedom, either alone or in community with others and in public and private, to manifest his religion or belief in teaching, practice, worship and observance *without discriminating against other religions.*

This is the first conclusion. The second is that if we wish to maximize religious freedom, then a course in world religions should be included in the curriculum of every country around the globe wherever religion is taught in any form. The study of world's religions, in the same spirit, should also be included as a part of the secular curriculum around the world.

Notes

1. See Brownlie (1992, p. 25).
2. Ibid., p. 125ff.
3. Ibid., p. 114ff.
4. Ibid., p. 132.
5. Mbiti (1969, p. 4).
6. Twiss (2003, p. 46).
7. Merriam-Webster (2002, p. 464).

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Part II

Chapter 7
Concept of Religion in World Religions and the Corresponding Concept of Religious Freedom

I

The idea that the notion of religion itself varies among the various religions of the world has been discussed with increasing frequency in recent years, with the additional subtext that the Western concept of religion, which dominates current discourse, is just one of many, and one which may be unable to do justice to these various notions.[1] Moreover, there is also an increasing awareness that because the Western notion dominates the intellectual and political discourse in the global theatre, it may be affecting the self-understanding of religion in these various traditions, even as it is, paradoxically, unable to do justice to them.[2] Scholars have also speculated how the study of religion might itself assume a different shape and form, and even spirit, if it operated with a notion of religion drawn from religious traditions other than the Western-Christian.[3]

It may therefore not be inappropriate to ask the question: How might our very concept of religious freedom be affected, if we were operating with a concept of religion drawn from the Primal Religions, or Hinduism, or Islam, rather than from the Christian West.

II Religious Freedom in the Primal Religious Tradition

The term primal religion is being used here to refer to those religious traditions which are otherwise referred to as tribal, indigenous, and in many other ways.[4]

The primal religions will immediately relate to the concept of *freedom* in the expression religious freedom, for they view themselves as victims of religious oppression. Mary Pat Fisher describes this situation as follows:

> Outsiders have little known or understood the indigenous sacred ways. When threatened with severe repression, many of these traditions have long been practiced only in secret. In Mesoamerica, the ancient teachings have remained hidden for five hundred years since the coming of the conquistadores, passed down within families as a secret oral tradition. The Buryats living near Lake Baykal in Russia were thought to have been converted to Buddhism and Christianity centuries ago; however, few attended the opening of a Buddhist temple after the fall of communism, whereas almost the entire population of the area gathered for indigenous ceremonies on Olkhon Island in 1992 and 1993.[5]

A. Sharma, *Problematizing Religious Freedom*, Studies in Global Justice 9,
DOI 10.1007/978-90-481-8993-9_7,

She points out that:

> In parts of aboriginal Australia, the real teachings have been underground for two hundred years since white colonialists and Christian missionaries appeared. As aborigine Lorraine Mafi Williams explains:
>
> We have stacked away our religious, spiritual, cultural beliefs. When the missionaries came, we were told by our old people to be respectful, listen and be obedient, go to church, go to Sunday school, but do not adopt the Christian doctrine because it takes away our cultural, spiritual beliefs. So we've always stayed within God's laws in what we know.[6]

Mary Pat Fisher then goes on to make two important points, one having to do with contemporary reality and the other with contemporary epistemology. She points out:

> Not uncommonly, the newer global traditions have been blended with the older ways. For instance, Buddhism as it spread often adopted the existing customs, such as the recognition of local deities. Now many indigenous people sincerely practice one of the global religions while still retaining many of their traditional ways.[7]

There are also, and this is her second point, hurdles to obtaining adequate knowledge of such traditional ways as have been retained:

> Until recently, those who attempted to ferret out the native sacred ways had little basis for understanding them. Most were anthropologists who approached spiritual behaviors from the non-spiritual perspective of Western science. Knowing that researchers from other cultures did not grasp the truth of their beliefs, the native peoples have at times given them information that was incorrect in order to protect the sanctity of their practices from the uninitiated.[8]

This situation came about as a result of the assault on the primal religions by the proselytizing religions, specially Christianity, resulting in the conversion, sometimes forced, of the followers of the primal religious tradition. According to Donna Awatere, a Maori spokesperson, the Christian "concept of the detached God, identified with the good, became an instrument of colonization when it was used by the missionaries to fight Maori culture and the nature—and land-based spiritual beings who were regarded as evil. Thus from this point of view the concept of 'religion,' which for Donna Awatere is synonymous with Christianity, is an expression of white colonialism and oppression."[9] Stephan Schlang notes that while many Maoris may not share this radical view, they "would agree with the criticism of the role missionaries and the churches played in the past."[10] As a consequence, the right to proselytize, from the point of view of these primal religions, would be tantamount to the denial of religious freedom to them, if understood as part and parcel of religious freedom. For the primal peoples, "respect the right of others to their own way and make no attempt to convert outsiders to theirs."[11] So "indigenous elders who are now speaking out seek converts not to their path but to a respect for all life which they feel is essential for the harmony of the planet."[12] Thus one dimension of religious freedom, as it is presently understood, would *not* be part and parcel of the primal concept of it—namely, that religious freedom must involve the right to change one's religion.

Another feature of primal religions, which might have a major implication for its concept of religious freedom, is the fact that in "most native cultures, spiritual lifeways are shared orally. Teachings are experienced rather than read from books. *There are therefore no scriptures of the sort the other religions are built around* (although there once existed some texts which were destroyed by conquering groups, such as the Mayan codices)."[13] This fact has an important implication for how the religion is manifested. To a certain extent territoriality takes the place of scripturality, so that religious freedom for primal peoples includes the right to practice on their sacred sites. The non-primal religions also have their sacred sites, but they are not involved in the daily practice of the religion the way those of the primal religions are. The fact that primal peoples in the U.S.A. could not preserve these sites goes to show the First Amendment did not protect their religious rights, because the American concept of religious freedom worked with a Western concept of religion.

A third implication flows from this second point. The primal perspective would include the right to claim restoration or compensation for religious oppression within their concept of religious freedom. The communiqué from the traditional circle of Indian elders and youth, at a meeting in the Queen Charlotte Islands, put it this way:

> Increasingly, the world is beginning to recognize the integrity of indigenous religions. Our spiritual visions are gaining equality and support in international affairs.... Yet we must remind all people that the practices of our spiritual ways require certain elements. We need access to sacred sites, which must be protected. We need access to sacred animals, which must be kept from regulatory interference. *We need the return of sacred objects, many of which are now in museums, historical societies, universities and private collections.*
>
> Indigenous people around the world have a birthright and a responsibility to their ancestral lands. Our cultural and spiritual identity is dependent upon a land base. If the nations remain truthful to their traditional philosophy and values toward the land, their future is secure.[14]

The Maori in New Zealand would go even further in their exercise of this dimension of religious freedom. Religion for them is not just a part of life, a concept they identify as European, but infuses all of life. They use the English word "religion" or the Maori word for it, *haahi* (derived from the English word church) to describe the fragmented concept of religion[15]; for their more spiritual understanding of it they use the word *wairua* or *te taha wairua*, which could be translated as "the spiritual side" or "the spiritual dimension."[16] Stephan Schlang writes:

> Following the Maori understanding of *te taha wairua* I can appreciate, too, that I got an answer about politics after asking a question about religion—to return to the example I began with. Since *te taha wairua* permeates all aspects of Maori culture and society, it is also reflected in what we would call "plain politics." When the Maori demand the return of their tribal land, it is its *mana* ("spiritual power") they want to regain, which is closely linked with the *mana* of the people whose well-being, physical *and* spiritual, depends on the integrity of their *mana*
>
> *Mana* and *tapu* are expression of man's spirituality which is the basis of his dignity. They form the spiritual background of the whole Maori struggle for the land, for full equality, and for the recognition of their cultural values. After all, the Maori only demand the right to live according to their own ideal of what it means to be a real human being.[17]

The concept of religious freedom, when adumbrated from the perspective of a primal concept of religion, would therefore emphasize at least these distinct vectors: (1) their own reality of religious oppression (hardly experienced by the modern West), (2) rejection of the right to proselytize as part of religious freedom, and (3) the inclusion of the right to restoration or compensation for religious deprivation, within the definition of religious freedom.

III Religious Freedom and the Hindu Religious Tradition

Hinduism shares several features of the Primal Religious Tradition, and one of them is the trouble it has in finding an indigenous word which would correspond to the English word "religion." A similar problem was faced by Stefan Schlang in relation to the Maori tradition:

> Written material on this topic is rather scarce; therefore the Maori people themselves, theologians and lay persons, became my main sources. When I asked them about religion, I repeatedly got an answer I would have listed under the heading "politics." At first I was surprised even though I knew that in traditional Maori society religion was not separated from other aspects of life and that there is no word in the traditional Maori language corresponding to our term "religion." It took me some time to realize what had happened. Unconsciously I had transferred the European concept "religion" to a cultural context which it did not fit into.[18]

The point is not unimportant because if there is no concept which corresponds to religion, then the whole concept of "religious freedom" becomes vacuous from the point of view of that tradition. One discovers, however, that there were ways of circumventing this problem. One also discovers at the same time, that if one took the concept of "religion" indigenous to the tradition seriously into account, even though it did not fit in with the Western one, how different an animal religious freedom becomes from this new perspective.

The Hindu case replicates the previous one. Thus the eminent Indologist, Daniel H.H. Ingalls, is on record as stating that "ancient India...had no word for religion."[19] The word used most often in India to do duty for it is *dharma* (or *dharam*), and Wilfred Cantwell Smith notes that "modern Hindu *dharma* is developing a meaning of the English term 'religion' that its classical Sanskrit counterpart did not have."[20]

This word *dharma* possesses connotations in the Hindu religious tradition which will have important implications for the conceptualization of religious freedom within the tradition. It has the strong sense of customary duties. The following anecdote, narrated by S. Radhakrishnan, helps make the point:

> It is related of an Indian Christian convert who attended the church on Sunday and the Kālī temple on Friday, that when the missionary gentleman asked him whether he was not a Christian, he replied: "Yes, I am, but does it mean that I have changed my religion?"[21]

A case, which was brought before the British magistrate in mid-nineteenth century by a group of Brahmins, at Tirunelveli in south India, may be of interest here.

It so happened that those outcastes, whose customary duty it was to pull the chariot at the temple, had converted to Christianity and now refused to pull the chariot, thereby raising the spectre of its discontinuance. John B. Carman writes:

> It was generally British policy to respect the customs of Hindus and other religious groups, but in this case the British magistrate had a serious problem. How, he asked the Brahmins, could he compel the outcastes to perform a vital service for a religion to which they no longer belonged? To this the Brahmins had a prompt and emphatic reply. It does not matter, they said, what your personal religious convictions are, or what the personal feelings of the outcaste servants are. The duty to which they were born, their *dharma*, is to provide physical labor to the rest of the community, and your duty as a ruler is to force them to do their duty. Otherwise the procession cannot proceed, and the *dharma* of the temple will be disregarded.[22]

The case is suggestive in many ways but the point I would like to emphasize is that, for the Hindus, it did not matter that some of the Hindus had become Christians. The fact that they had become Christians did not mean that they had ceased to be Hindus. The previous anecdote and this case, while different in so many ways, share this common feature that it was quite consistent to follow another religion and yet stick to one's own *dharma* at the same time.

The concept of religious freedom from such a perspective would imply that one should be free to follow as many religions as one likes at the same time. In other words, multiple religious affiliation should be part and parcel of the concept of religious freedom. It also follows that conversion to a religion should not involve the abandonment of the other.

IV Religious Freedom and the Buddhist Religious Tradition

Buddhism will lend support to a number of points which have emerged so far in this chapter, either partially or in full measure. It will not go along with the Primal Religious Tradition, or even the Hindu, in being opposed to all missionary activity, as it is a missionary religion, but it would agree that conversion to Buddhism need not be imply the abandonment of previous religious allegiances. Both the life of the Buddha and the history of Buddhism attest, by and large, to Buddhism's openness to multiple religious participation and even affiliation.

Buddhism, however, possesses certain striking features as a religion. It does not uphold a God in the traditional sense of the word and so "as a non-theistic religion, it, like Jainism, evades many of the Western characterizations of religion, in so far as these are tied to describing a certain core ultimate. If there is an ultimate in the Theravada it is not God and not a Being. It is true that the Buddha has some analogies to a god, but according to the Theravada's own doctrine he is not strictly speaking 'there.' Nirvana is like Gertrude Stein's Oakland: there is no 'there' there."[23]

Thus Buddhism does not conform to a typical religion in terms of its contents; one accepts it as a religion because it functions as one. This raises a very important

question in the context of religious freedom. If religions and ideologies are functionally so similar, why should religious freedom not include ideological freedom? In fact it does, as religious freedom involves both freedom of religion or belief, and the latter need not be religious. But this raises the question: Why have a special category of religious freedom at all? Freedom of belief could perhaps cover all cases.[24]

If, however, nationalism is accepted as one such ideology, then religious freedom would mean that everyone is free to be the citizen of any country one likes, a freedom which would be on par with converting to any religion one likes. But will the *nations*, which accepted the Universal Declaration of Human Rights, along with its Article 18 conferring religious freedom, go along and if not, why not?

V Religious Freedom and the Chinese Religious Tradition

The reader was probably expecting a separate discussion of religious freedom in terms of the Confucian and the Taoist religious traditions but the fact that we deal with them together, and in fact include Chinese Buddhism and folk religions as well, helps to illustrate how dramatically the concept of religious freedom may have to be reconfigured, once the concept of religion itself in particular religious traditions is taken into account.

To begin with, we have a problem with which we are now not unfamiliar. One did not have a word in the Primal Religious Traditions, or in Hinduism or in Buddhism, which could serve as an equivalent for the English word "religion," without which it would be hard to identify the concept of religious freedom in that particular tradition. In due course, however, demand created supply and words were coined, or new meanings were tagged to existing words, to provide an equivalent.

The case of Chinese religions in this respect does not turn out to be very different. Thus Liang Chi'-Ch'ao (1873–1929), who is considered a representative Chinese intellectual of the late nineteenth and early twentieth century, declared, that "our country is unique in that we have no religion and this distinguishes us from all the other nations."[25] What he had in mind, however, was the fact that Chinese philosophical thought had always risen above religion, which for him was "a synonym for the superstition of the masses."[26] The point remains valid, however, that there was no Chinese equivalent for the English word religion. It is also worth noting that "the word *tsung-chiao* is used today in East Asian countries to signify religion, even though it was a term coined in an effort to find an equivalent term to the Western word *religion*. Since it is a translated word connoting a strong sense of relationship between the divine and the human (whether it emphasizes inner piety or a re-binding of a broken relationship), some modern intellectuals have reacted to the usage of this term in dealing with their cultural heritage."[27]

Sung-Hae Kim, who wrote these words, joins the ranks of such scholars in the course of his own essay, when he refers to the book by Daniel Overmeyer entitled *Religions of China* (Harper and Row, 1986). He notes that "as far as we keep the notion and definition that religion deals with direct relationship between person deities and human beings, we have to leave the vast and central realm of thought in

the intellectual history of China, and we are forced to be driven only to the popular practices of Taoism, Buddhism, festivals and customary rituals, though important they are."[28] He remarks again later: "Just as Professor Overmeyer has done in Chapter II of his book, concentrating on the common types of beliefs and activities such as the holy place, time, meditation, leadership and organization, etc., which are shared by the Chinese and other peoples of the world, [it] is interesting and probably a necessary step in the research of a historian of religion."[29] But he goes on to add: "However, I doubt whether this approach will reveal what has been the core of Chinese tradition, i.e., the inner push, the depth dimension that provides energy and ultimacy for transformation of life as a whole."[30] He goes on to say:

> I have mentioned already a contemporary East Asian word *tsung-chiao* is a term coined as a translation of religion. Since *tsung*, which means main, primary, ancestral, is used here as an adjective, the key word is *chiao* (teaching). The concept of teaching as transmitted from the sage kings was clearly formulated first in the Analects of Confucius, who was truly the synthesizer and interpreter of the ancient Chinese tradition. Then it was diversified and theorized by the hundred schools of the Warring States period.[31]

Sung-Hae Kim ultimately takes a synchronic view of the basic structure of Chinese tradition, "drawing the five constitutive elements from Confucianism, Taoism, Buddhism and folk religions. These five elements are the following: the primacy of inner-cultivation, the social ideal of peace, Heaven as the source of morality, ancestors and other deities as mediums of moral education, and rites and divination practices." He goes on to say: "By describing how these five elements interact with each other I will attempt to see how the Chinese have perceived human life *as a whole in the light of ultimacy*."[32]

After carrying out this exercise, Sung-Hae Kim concludes as follows:

> We began our discussion with the fact that the term *tsung-chiao* carries a Western connotation of religion which brings out either reaction against it or a tendency of limiting its area into a marginalized zone of Chinese tradition. However, I am not proposing here to change this term into another one. As I mentioned before, the literal meaning of *tsung-chiao* as "the primary teaching" is acceptable. Moreover, this term has one hundred years of history and by now is firmly established in ordinary vocabulary. What I am appealing here is that we have to enlarge our concept of religion in the light of Chinese vision of the ultimate which is to a large extent East-Asian reality as well. In order to make my point more clear I will take Rudolf Otto as an example.[33]

Before we turn to the example from Otto, what Sung-Hae Kim has just said about the attempt to use the word religion in the context of Chinese religions is worth noting again: "*We have to enlarge our [Western] concept of religion in the light of Chinese version of the ultimate which is to a large extent East-Asian reality as well.*"[34]

He then turns to Otto as follows:

> Rudolf Otto's *The Idea of the Holy* (1917) was a fascinating work for me for quite many years. Recently I begin to see that his subtraction of the good from holiness contains a problem. Otto's definition of religion as *mysterium tremendum et facinans* or as the *sui generis* experience of the numinous was an attempt to point out what is unique in religion. But this way of experiencing the ultimate lacks orientation in life and is in danger of alienating

> religion from the rest of human life. I know that in his later life Otto himself tried to place ethical concerns back into religious sphere, but was not quite successful.[35]

He then extends this turn of thought to the Chinese situation as follows:

> As we have seen, moral concern has always been primary in Chinese tradition for both its effort of cultivation of self and its social ideals. Heaven or the Way/Principle of Heaven has been important because it is the source and norm of morality. Dissociating from morality one cannot think of the human nor of the ultimate. Hsün Tzu made it clear by his division of the four categories of existence: all beings are endowed with material energy *Ch'i*; all growing beings such as plants onward are endowed with life; all moving beings such as animals onward are endowed with sensation; the human beings are endowed with the sense of rightness above the other abilities. In a word, being moral is the very nature and characteristic of human beings. Therefore, according to the Chinese perception of reality, we cannot and should not divide the religious element from the ethical element. They are always together and they make sense only when they are together. Morality is the very reason of being human, and being moral is based on being religious.[36]

This exercise produces two important consequences for our concept of religion. In relation to the study of Chinese religions, "when we enlarge the concept of religion as encompassing human life as a whole in connection with its ultimate reference, value, or concern we do not have to search religion only from folk tradition or marginalized areas of Chinese culture. Concretely this means that when a historian of religion wants to teach or write on Chinese religion, he/she should attain a balanced understanding of Chinese tradition as a whole, including both intellectual and popular traditions and their interpretation."[37] But it is the consequence it produces in relation to the concept of freedom which is even more far-reaching. If the Western concept of religion, as it operates in human rights discourse, arguably tends to separate religion and morality, then the Chinese understanding elides this distinction. This is significant, because the violation of moral norms sets a limit to religious freedom in human rights discourse, along with health and public safety, while Chinese discourse of the kind carried out above would make it inseparable from it and would perhaps prefer to talk of moral freedom rather than religious freedom. In the light of this, religious practices set the limit to moral freedom now, if anything.

VI Religious Freedom and the Judaic Religious Tradition

It was noticed in the case of the many religious traditions discussed hitherto that they did not have a word for "religion." It therefore may be not without interest to note that "there is no word 'religion' in the Hebrew Old Testament. Neither is there a name for the particular religion of the Jews."[38] The circumstances in which the word Judaism arose may be recounted as follows:

> The Greek word *Iudaismos* occurs first in Second Maccabees (first century B.C. or later), appropriately to designate that for which loyal Jews were fighting in their struggle against Hellenism. Even here, a more faithful translation of the original meaning of the passage would be that these men were fighting for their Jewishness, rather than "for Judaism." The

> impact of Greek ways upon the Jewish community was a threat, they felt, to the traditional character of their living. What began, however, as designating a quality of life, eventually came to refer to the formal pattern or outward system of observances in which that quality found expression. Thus the concept "Judaism" was born.
>
> This is perhaps the first time in human history that a religion has a name.[39]

Judaism, as a religion, possesses a striking feature in its corporate character, which has significant implications for the concept of religious freedom. It is highlighted in these remarks, with which a well-known book on world religions commences the chapter on Judaism.

> Judaism, which has no single founder, no central leader or group making theological decisions, is the diverse tradition associated with the Jewish people. This family can be defined either as a religious group or a national group.
>
> * * *
>
> As a nation, "Israel" is a people who have been repeatedly dispersed and oppressed. After the horrors of the Holocaust, some Jews founded a homeland in the land of Israel where their ancestors had once walked. Other Jews live in communities around the world. Many who consider themselves Jews have been born into a Jewish ethnic identity but do not feel or practice a strong connection to Jewish religious traditions.[40]

The reference to the Holocaust is significant because some Jews have lost faith in God as a result of this tragedy but continue to regard themselves as Jews, that is to say, as members of the Jewish community.

The regnant concept of religious freedom in human rights discourse is couched in the language of individual rights and everyone has the right to change his or her religion. But suppose that only one Jewish family was left in a European country after an outbreak of violent anti-Semiticsm, and, were it to convert to another religion, Judaism would disappear from that country. Should its members convert? And what is more important: Should its members be allowed to convert, or should they be stopped from doing so, keeping the larger interest of the survival of the Jewish people in that country in mind?

The point is that individual and group rights can sometimes clash, when it comes to the exercise of religious freedom. A simple Rabbinic example serves to illustrate this clash. Several people are traveling in a boat and everyone has the right to use the space the person occupies on the boat in his own way. Yet if someone wished to make a hole in the space occupied by him as an exercise in individual rights, the boat would capsize.

The following case, cited by Prof. R. Panikkar, seems quite *apropos* here.

> A recent example: A Catholic missionary, after over a year of really living together with an Asian tribe and sharing with the people their respective beliefs, thinks that the moment has come for some formal conversions, since they are already practically Christians. He talks matters over with the enthusiasts about Christianity: "Would you like to become officially and publicly Christians? You are already convinced. . ." *etcetera*. Answer: "No, because some other people in the tribe are not ready." "But it is your *right*!," says the missionary, "you have the *right* to decide by yourselves—all the more since you neither harm nor despise the others." The answer is cutting: "We only have the right to take this step if the whole tribe does it."[41]

VII Religious Freedom and the Christian Religious Tradition

The prototypical understanding of religion, on which our subsequent understanding of the expression "religious freedom" must depend, comes from Christianity, or more accurately, from modern European Christian civilization.

As is well known, the word religion, "originally from the Latin *religio*," is used by Lucretius (c. 99 B.C.–c. 55 B.C.) in accord with the sense that it refers "to something 'out there' impinging on man"[42] and by Cicero (106 B.C.–43 B.C.) in a way as pointing to "something interior to persons."[43] Its use by Latin writers displays other semantic shades. Arnobius (died c. 330 A.D.) used it in a way which sets boundaries: "A *religio* of one set of people, clearly and radically distinct from the *religiones* of outsiders" came into being,[44] while Lactantius (c. 240–320 A.D.) used it in a way to imply that worship could be true or false, as in *vera religio* and *falsa religio*.[45] For Augustine (354–430 A.D.) it involved personal engagement with God.[46] The word fades into the background with the establishment of Christianity in the Roman Empire as the regnant religion, in favour of the word faith. During the Renaissance it acquires the sense of a "fundamental distinguishing human characteristic"[47] at the hands of Marsilio Ficino (1433–1499). The word takes on new life with the Reformation. Zwingli (1484–1531) uses *religio* to denote "a relation between man and God"[48] and the concept of "false religion precisely to characterize the tendency whereby men give their allegiance to religion rather than to God."[49]

> If we may sum up this period, then, we may say that some Renascence humanists and then some Protestant Reformers adopted a concept of religion to represent an inner piety; but that in the seventeenth and early eighteenth centuries this was largely superseded by a concept of schematic externalization that reflected, and served, the clash of conflicting religious parties, the emergence of a triumphant intellectualism, and the emerging new information from beyond the seas about the patterns of other men's religious life. These provided the foundations of the concept for the modern world.[50]

Subsequent developments such as that of the Enlightenment, and within Western philosophy and theology, assured that "the concept of 'religions' accordingly came to mean not only in the Enlightenment sense the various systems of what people believed, and not only in the Catholic sense what they ritually practiced, and not only in Schleiermacher's sense what they inwardly felt, but increasingly the historical development of all this over the long sweep of the centuries."[51]

Wilfred Cantwell Smith finally concludes his survey as follows:

> It is perhaps fair to summarize our survey by saying that we, as heirs to the somewhat chaotic developments, commonly employ the term religion in four quite distinct senses. It is important to discriminate these before we proceed. First, there is the sense of a personal piety. It is with this meaning that we are thinking today when we use such phrases as, "He is more religious than he was ten years ago"; or if we remark that in every community, Christian, Hindu, and the rest, there are some men whose religion is harsh and narrow, others whose religion is warm and open. Secondly and thirdly, there is the usage that refers to an overt system, whether of beliefs, practices, values, or whatever. Such a system has an extension in time, some relation to an area, and is related to a particular community; and is specific. In this sense, the word has a plural and in English the singular has an article. . . .

> Finally, there is "religion" as a generic summation, "religion in general." Its meaning is inevitably derived in part, for anyone using it, from his sense of the other three. In so far as it is historical, it is as complex as all "the religions" taken together. In so far as it is personal, it is as diverse as the men whose piety it synthesizes.
>
> The first sense discriminates religion in a man's life from indifference (or rebellion). The second and third (possibly intermingled) discriminate one religion from another. The fourth discriminates religion from other aspects of human life, such as art or economics.[52]

In assessing the significance of this analysis for the concept of "religious freedom," one needs to note its strengths and limitations. Its strength consists in the fact that all the four senses are reflected in the formal concept of religious freedom. The fact that one speaks of *religious* freedom means that religion is discriminated from other aspects of human life, such as economics or art. The fact that religious freedom involves the freedom to manifest one's religion means that it is something overt. The right to change one's religion also stems from the fact that many religions are acknowledged in the public sphere, and the right to follow the religion in private resonates with the first meaning.

Thus the foregoing analysis helps constellate religious freedom in the background of a history of ideas. Its limitation stems from the fact that it is semantic analysis set in a historical context, while how religious freedom has come to be perceived can be fully gauged only by a historical analysis set in a semantic context—specially in relation to Christianity. While the word was evolving these connotations in the Christian West, Western Christianity was expanding over the rest of the world, resulting in the Christianization of the Americas, and then of parts of Africa and Asia. Even where it did not spread as effectively as elsewhere, one should not underestimate its impact. It is often not realized how great a role the fear of conversion to Christianity played in igniting the so-called Indian Mutiny of 1857–1858—in which out of 139,000 sepoys all but 7,796 turned against the British.[53] S.M. Ikram writes: "That the general cause was the distrust awakened by the rush of social change initiated by the British and that this took the particular form of a fear that the changes presaged *an attempt by the British to convert the people to Christianity, there can be little doubt*."[54]

The British were merely exercising their religious freedom in terms of human rights discourse, as proselytization is a key ingredient of Christianity, but human rights discourse as yet has no way of factoring in the fear of being forced to change one's religion in its discourse, specially when the proselytizer and the potential convert are caught in an asymmetrical power relationship. A counterfactual example might help. If Christianity had succeeded in manifesting itself in such a way that the whole world became Christian, then the question of *religious* freedom would arguably have been a non-starter; sectarian freedom perhaps or the right to have no religion would still apply, but not religious freedom as we understand it today in the context of world religions. Even the use of the word religion would seem suspect, if what happened in the case of the Roman Empire can serve as an example:

> The Christian group, to verbalize the new life that they were experiencing and proclaiming, introduced in addition to *ecclesia* other elements of a new vocabulary. The most important was the new concept "faith." In addition, however, they of course took over also a great

many terms from the older religious life, which survive honourably until today: piety, reverence, devotion, divinity, ritual, chapel, to name a few from the Latin side. Among these was the word *religio*, which appears richly in Christian writing in Latin from the beginning.

Actually, until the fourth century it was used more than later. It would seem that there is perhaps a correlation between the frequency of usage of this word and the historical situation of religious pluralism and rivalry, where there were many "religions" of which the Christian was one—a situation that had not been known before in the Latin world and was not known again. By the fifth century, when the Christian church had virtually eliminated its rivals, the term was less actively in use, and in fact almost disappeared. But in the meantime its meaning had evolved and the word had become incorporated into the Christian tradition from which modernity has inherited it. . .[55]

VIII Religious Freedom and the Islamic Religious Tradition

While other religious traditions seem to have struggled with questions of self-definition for a while after they were founded, this is not so in the case of Islam. In any case, Islam acquired self-definition as a religion even as the early tradition was assuming shape.[56] The situation in this respect may be summed up as follows:

Islam seems to be the only religion which from its very beginning had a self-definition which can be seen as comparable to other religious traditions. The term *'islām* already occurs in the Qur'an. It is derived from the verb *'aslama*, which means "to submit" or "to surrender" (to God). A *muslim* is someone who surrenders to God. Islam is understood as *dīn*, which is the common term for "religion" in Arabic, as Wilfred Cantwell Smith had already shown. The classical dictionaries give the term *wara'* "piety" as an equivalent. According to Smith the word *wara'* never has a systematic or a community meaning and it cannot have a plural. However *dīn* also carries the sense of a particular religious system, one "religion" as distinct from another and in this meaning it also has the already mentioned plural *'adyān*. According to the Qur'an (5,3) God has chosen *'islām* as the religion for his followers. However *'islām* did not start with Muhammad but was preached already by earlier prophets. Abraham for example is said to have admonished his sons to die as *muslimūn* (2,132). Sometimes the term *muslim* even refers to contemporary Jews or Christians (29,46), who in general are called *'ahl al-kitāb*—"people of the book."[57]

This passage makes it abundantly clear that the concept of religion in Islam is that of a "revealed religion." And, with the coming of Islam, which is the revealed religion par excellence, religious freedom came to mean the freedom to possess a revealed religion. This is the common implication of disparate facts related to Islam. Let us take three of them. There is the claim that early Islam offered to the Arab the choice between Islam or death. The point to be rescued from this dire situation is that this was so because now a revelation had been sent in its fullness to the Arabs, therefore rejection of Islam meant rejection of the revealed religion. Then Islamic tradition asserts that "beginning with Adam. . .God sends 124,000 prophets at various times and to every community to remind people of their obligation to the one and only sovereign lord and warn them against heedlessness and disobedience. The *Qur'ān* declares: 'There is not a nation but that a warner was sent to it' (Q. 26:207)."[58] Thus revelation has been widely shared. A third contemporary fact also throws light on the issue. According to the current Indonesian dispensation,

the various recognized religions are not supposed to carry out conversion activity among themselves, but they can all proselytize among followers of folk religions. This practice broadly fits into the pattern outlined above—that those who belong to a revealed religion basically enjoy the religious freedom to practice it.

The situation may be compared to the following. Once writing was discovered, enthusiasts for literacy might insist that the whole world must have a script; ideally perhaps the same script but not necessarily—all is well so long as one had a script, because it is illiteracy which must be wiped out.

IX Religious Freedom in World's Religions

It is clear then that each religious tradition has its own take on religious freedom which reflects its own theological orientation and historical experience. This helps to highlight the point that our regnant concept of religious freedom in human rights discourse reflects one particular take on it, which we may describe as a secular take and that it is one take among many. This does not mean that it is not a defensible and even a workable take in a world characterised by religious and ideological pluralism but it does help us understand that there are takes other than it which it would be wise to keep in view as we explore it further.

Notes

1. See Bianchi (1994, passim).
2. See, for example, Schlang (1994, pp. 157–61).
3. See Sharma (1994, pp. 591–603); Smart (1994, pp. 603–06).
4. On the use of term primal see Sharma (2006, pp. 1–5).
5. Fisher (1997, pp. 38–9).
6. Ibid., p. 38.
7. Ibid.
8. Ibid.
9. Schlang, op. cit., p. 159.
10. Ibid.
11. Fisher, op. cit., p. 41.
12. Ibid., p. 67.
13. Fisher, op. cit., p. 40, emphasis supplied.
14. Ibid., p. 67, emphasis added.
15. Schlang (1994, p. 159).
16. Ibid.
17. Ibid., p. 161, emphasis added.
18. Schlang, op. cit., p. 157.
19. Cited, Smith (1963, pp. 248–49).
20. Ibid., p. 59.
21. Radhakrishnan (1993[1927], p. 39).
22. Carman (1988, p. 115).
23. Smart (1994, p. 603).
24. Ibid., p. 604.
25. Cited in Kim (1994, p. 247).

26. Ibid., p. 247.
27. Ibid.
28. Ibid., p. 248.
29. Ibid., pp. 248–49.
30. Ibid., p. 249.
31. Ibid.
32. Ibid., emphasis added.
33. Ibid., pp. 257–58.
34. Ibid., p. 257, emphasis added.
35. Ibid., p. 258.
36. Ibid.
37. Ibid., pp. 258–59.
38. Smith (1963, p. 72).
39. Ibid.
40. Fisher, op. cit., p. 216.
41. Panikkar (Winter 1982, p. 92) note 21.
42. Smith, op. cit., p. 23.
43. Ibid. Also see Juergensmeyer (December 2010, pp. 886–87): "The term, 'religion', was not the one that was frequently used, even by Christians, until the Enlightenment's secular-religious distinction. The origins of the term, 'religion', are debated. Some claim it comes from the Latin *relego*, 'to read again' or 'repeat' as one might do with scripture or creeds; others argue that is comes from another Latin term, *religare*, 'to bind anew,' as in a contract or covenant; still others aver that it comes from the Latin *res-legere*, 'with regard to a gathering,' such as a religious festival or group. In its modern usage as an ideological construct of beliefs joined with an institutionalized community, 'religion' makes sense only in juxtaposition with secularism. It is used to demarcate the ideas, practices, beliefs, and institutions that are related to a particular faith and tradition that has a name—such as Christianity—and can be labeled as a religion. Thus the word 'religion' is not easily translated into non-European languages."
44. Smith (1963, p. 27).
45. Ibid., p. 28.
46. Ibid., p. 29.
47. Ibid., p. 32.
48. Ibid., p. 35.
49. Ibid.
50. Ibid., p. 44.
51. Ibid., p. 46.
52. Ibid., pp. 48–9. Parts from this quotation have been cited earlier.
53. Dalrymple (2006, p. 10).
54. Ikram (1965, p. 287), emphasis added. Also see, Dalrymple, op. cit., Introduction.
55. Smith, op. cit., pp. 24–5.
56. Ayoub (1996, p. 384).
57. Haussig (1994, p. 802).
58. Ayoub, op. cit., p. 363.

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Chapter 8
Anticipations of Religious Freedom in World Religions

Religious freedom is a concept which has assumed its present shape in modern times, with the emergence of human rights discourse after the end of the Second World War. It could be argued that it is the logical outcome of an earlier disposition, which could be characterized as that of religious tolerance.

No treatment of religious tolerance can afford to ignore the contributions of John Locke (1632–1704) in this respect. When he died he was working, along with commentaries on the *Epistles of St. Paul*, on a draft of a fourth *Letter of Toleration*, after having already published three.[1]

His basic position is spelled out in the very first *Letter Concerning Toleration*. Locke argues both theologically and philosophically in terms of what we would call human rights. He argued theologically by maintaining

> Toleration to be the chief characteristic mark of the true church, for religious belief is primarily a relation between each man and God. True religion regulates men's lives according to virtue and piety, and without charity and love religion is false to itself. Those who persecute others in the name of Christ abjure his teachings, seeking only outward conformity, not peace and holiness. Who can believe that in torture and execution the fanatic truly seeks the salvation of the soul of his victim? Moreover, the mind cannot be forced or belief compelled. All efforts to force or compel belief breed only hypocrisy and contempt of God. Persuasion is the only lever that can truly move the mind.[2]

Locke argued philosophically as follows:

> It is to be doubted that any man or group of men possess the truth about the one true way to salvation. In the Scriptures we have all that may reasonably be claimed by Christians to be the word of God. The rest are the speculations and beliefs of men concerning articles of faith and forms of worship. Sincere and honest men differ in these matters, and only tolerance of these differences can bring about public peace and Christian charity. Jews, pagans, and Muslims are all equally confident in their religious faith. Mutual tolerance is essential where such diversity exists. This is most evident when we observe that it is the most powerful party that persecutes others in the name of religion. Yet in different countries and at different times power has lain in the hands of different religious groups. It is physical power, not true faith, which decides who is persecuted and who persecutes.[3]

From a human rights angle, for Locke,

> The liberty of person and the liberty of conscience are decisive. He limited this liberty only by denying to religion the right to harm directly another person or group or to practice

A. Sharma, *Problematizing Religious Freedom*, Studies in Global Justice 9,
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clearly immoral rites. By a curious and probably prudential exception, he denied tolerance to atheists, because promises, covenants, and oaths would not bind them, and to any church so constituted "that all those who enter into it do thereby *ipso facto* deliver themselves up to the protection and service of another prince."[4]

I

Two concepts within Hinduism are often identified in the context of religious tolerance and religious freedom, as in some sense invoking these values. These are the concepts of *adhikāra-bheda* and *iṣṭa-devatā*. Thus T.M.P. Mahadevan concludes his section on universality as a dimension of Hinduism with the following remark:

> There are various cults in Hinduism and a variety of creeds. But conflict among them is avoided by the twin doctrines of *adhikāra* and *iṣṭa*. *Adhikāra* means eligibility. A person's faith is determined by the kind of man he is. There is no use, for instance, in putting a boy in the Honours Class, if he is fit only for the Pass Course. What is meat for one may be poison for another. A man's creed depends upon his *adhikāra*. And it is his eligibility that determines his *iṣṭa* or ideal. Hinduism prescribes to each according to his needs. Hence it is not to be considered as a single creed or cult, but as a league of religions, a fellowship of faiths.[5]

The hint then is that just as these two concepts provide the universal poles around which the Hindu world rotates, the universe of multiple religious discourse could as well benefit from them.

The doctrine of *adhikāra*, or more properly, *adhikāra-bheda* or differences in eligibility, enshrines the idea that different people are suited or eligible for different modes of worship. This idea becomes clearer when the doctrine is referred to as *adhikāri-bheda*, that what is religiously appropriate differs according to the person involved. Thus one form of religiosity may suit an academic and another might be more suitable for the artisan.

An eloquent articulation of this principle has been offered by a prominent modern Hindu thinker, Krishnachandra Bhattacharya, as follows:

> **Respect for Individual Differences**
>
> The doctrine of *adhikāri-bheda* is an application of this epistemological notion of absolute relativity to the specifically religious sphere. The difference of *adhikāra* or spiritual status is not necessarily a gradation; and so far as it is a gradation it does not suggest any relation of higher and lower that implies contempt or envy. The notion of *adhikāra* in fact means in the first instance just an acceptance of fact or realism in the spiritual sphere. It is a question of duty rather than of rights in this sphere; and a person should be anxious to discover his actual status in order that he may set before himself just such duties as he can efficiently perform in spirit. It is a far greater misfortune to over-estimate one's status than to under-estimate it. A higher status does not mean greater opportunity for spiritual work, since work here means not outward achievement, but an "inwardizing" or deepening of the spirit. Again, from the standpoint of toleration, one not only respects the inner achievement of a person admitting an inferior status, but can whole-heartedly identify oneself with it; the highest *adhikārin* should feel it a privilege to join in the worship of the humblest. There is aristocracy in the

> spiritual polity; spiritual value is achieved by the strong and is much too sacred a thing to be pooled. At the same time every individual has his sacred *svadharma* and has equal opportunity with everyone else to realize or "inwardize" it.[6]

The concept of *adhikāra-bheda* or *adhikāri-bheda* is no doubt congruent in principle with that of religious freedom, but it is also capable of being misapplied. It has been used in the history of Hinduism to declare some people ineligible for a certain spiritual path, thereby making it the preserve of the privileged.[7] Similarly, the doctrine is also sometimes coupled with that of hierarchy, so that some paths are considered as superior.[8] Thus a doctrine which, on the face of it mitigates hierarchy, can and has been used in ways which promotes it.

It is, however, possible to look upon these developments as abuses of a doctrine, which essentially seems designed to undergird religious pluralism. Sometimes doctrines produce unintended consequences. The First Amendment, for instance, which was meant to protect religious freedom, ended up compromising the religious freedom of American-Indians.

The allied idea of the *iṣṭa-devatā*, or chosen deity, is the pervasive doctrine within Hinduism that each individual is entitled to choose his or her own "god" or object of worship, thereby generating the *bon mot* that the Hindus are a choosing people rather than the chosen people—they choose their own God. Thus while the doctrine of *adhikāra-bheda* upholds the principle of pluralism at the level of the believer, the doctrine of *iṣṭa-devatā* uphold this doctrine at the level of beliefs or deities. A major modern Hindu thinker, S. Radhakrishnan, explains the concept as follows:

> When the pupil approaches his religious teacher for guidance, the teacher asks the pupil about his favourite God, *iṣṭadevatā*, for every man has a right to choose that form of belief and worship which most appeals to him. The teacher tells the pupil that his idea is a concrete representation of what is abstract, and leads him gradually to an appreciation of the Absolute intended by it. Suppose a Christian approaches a Hindu teacher for spiritual guidance, he would not ask his Christian pupil to discard his allegiance to Christ but would tell him that his idea of Christ was not adequate, and would lead him to a knowledge of the real Christ, the incorporate Supreme. Every God accepted by Hinduism is elevated and ultimately identified with the central Reality which is one with the deeper self of man. The addition of new gods to the Hindu pantheon does not endanger it. The critic who observes that Hinduism is "magic tempered by metaphysics" or "animism transformed by philosophy" is right. There is a distinction between magic tempered by metaphysics and pure magic. Hinduism absorbs everything that enters into it, magic or animism, and raises it to a higher level.[9]

The reader might notice that this doctrine is also capable of generating a hierarchy, until it is realized that Hinduism is also a religion of multiple hierarchies. These doctrines emphasize the realization that "to despise other people's gods is to despise them, for they and their gods are adapted to each other."[10]

Thus religious tolerance, and concomitantly religious freedom, are important ideas within Hinduism, but it must be added that

> Although Hindus were traditionally noted for their doctrinal tolerance they have not been perceived as tolerant in the practice of their religion. Hindus have always been far more rigid with respect to orthopraxy ("doing the right thing/behaving in the accredited way") than orthodoxy ("believing the right doctrine(s)"). We have indicated as much in the context of caste-*dharma*. This has applied not only to the upper castes, who have a vested

> interest in maintaining caste hierarchy, but also to the lower castes and even untouchables who have either sought to reinforce the hierarchical structure by attempts at Sankritisation, or who have accepted it under the weight of centuries of despairing acquiescence. With the rise of the Dalit movement and its ideology of "counter-culture"—counter to Brahminic and Sanskritic Hinduism, that is—on the one hand, and the attempts of latter-day fundamentalists to define some homogenizing essence of Hinduism on the other, this situation is changing. We await the outcome.[11]

II

Buddhism also possesses a doctrine which may be considered a mirror image of the Hindu doctrine of *adhikāra-bheda*, namely, that of *upāya-kauśalya* or skill in means.

> In a nutshell, it is *adhikārabheda* that necessitates *upāyakauśalya*. It is because people stand at different levels on the path of spiritual progress and because they occupy different rungs on the spiritual ladder that the teachings have to be adjusted to their level. And the skill in means consists precisely in presenting the insights to them in such a way that they become meaningful to them at their own level. The Hindu version of the doctrine focuses on the differences among the aspirants; the Buddhist version on the skill of the teacher in adapting the teaching to the needs of the spiritual aspirants. The two doctrines, when placed in apposition, clarify each other. They are reciprocally illuminating.[12]

It might be objected that the teachings which are to be communicated are nevertheless those of Buddhism. In a sense this is true—for both the pre-Mahāyāna and Mahāyāna forms of Buddhism.

> In spite of the paucity of references in Pali writings, it is remarkable that *upāya* here assumes a double aspect, referring to the activities both of aspiring monk and good teacher, skilled in the ways of helping others across the spiritual threshold. Variously emphasized, this double usage is frequently found in early Mahāyāna, although no direct textual lineage should be assumed. Other Pali usage is either non-technical or late and incidental. This relative inattention to the term in Pali texts does not mean, however, that the way of thinking assumed in this terminology is foreign either to Theravāda Buddhism in its fully developed form or to the earliest Buddhists in general. Admittedly, there is no direct evidence that the Buddha himself made use of this specific term to explain the way his teaching was to be understood. Nevertheless, there are many indications that his message was presented with conscious, pragmatic skill. In support of this, one need only think of such well known scriptural similes as the raft, the poisoned arrow, the pith, and the water snake, in which the provisional and practical nature of Buddha's teachings is made clear.[13]

One point at which the concept of religious freedom intersects *upāya* is the religious freedom allowed for in the exposition of the Buddhist teaching, but the other, more important, point is the one which leaves one free to accept or reject these teachings. This point finds its clearest articulation in the famous Kālāma Sutta, which is summarized below:

> The Buddha once visited a small town called Kesaputta in the kingdom of Kosala. The inhabitants of this town were known by the common name Kālāma. When they heard that the Buddha was in their town, the Kālāmas paid him a visit, and told him:

> "Sir, there are some recluses and brāhmaṇas who visit Kesaputta. They explain and illumine only their own doctrines, and despise, condemn and spurn others' doctrines. Then come other recluses and brāhmaṇas, and they, too, in their turn, explain and illumine only their own doctrine, and despise, condemn and spurn others' doctrines. But, for us, Sir, we have always doubt and perplexity as to who among these venerable recluses and brāhmaṇas spoke the truth, and who spoke falsehood."
>
> Then the Buddha gave them this advice, unique in the history of religions:
>
> "Yes, Kālāmas, it is proper that you have doubt, that you have perplexity, for a doubt has arisen in a matter which is doubtful. Now, look you Kālāmas, do not be led by reports, or tradition, or hearsay. Be not led by the authority of religious texts, nor by mere logic or inference, nor by considering appearances, nor by the delight in speculative opinions, nor by seeming possibilities, nor by the idea: "this is our teacher." But, O Kālāmas, when you know for yourselves that certain things are unwholesome (*akusala*), a wrong, and bad, then give them up .... And when you know for yourselves that certain things are wholesome (*kusala*) and good, then accept them and follow them."
>
> The Buddha went even further. He told the bhikkhus that a disciple should examine even the Tathāgata (Buddha) himself, so that he (the disciple) might be fully convinced of the true value of the teacher whom he followed.[14]

Thus one was free to leave the Buddha's order at any time one wished. This spirit of religious freedom within Buddhism also finds expression in an edict of Emperor Asoka (third century B.C.), which runs as follows:

> One should not honour only one's own religion and condemn the religions of others, but one should honour others' religions for this or that reason. So doing, one helps one's own religion to grow and renders service to the religions of others too. In acting otherwise one digs the grave of one's own religion and also does harm to other religions. Whosoever honours his own religion and condemns other religions, does so indeed through devotion to his own religion, thinking "I will glorify my own religion." But on the contrary, in so doing he injures his own religion more gravely. So concord is good: Let all listen, and be willing to listen to the doctrines professed by others.[15]

Buddhism also combined religious tolerance with religious freedom at the social level, in a way quite relevant for our times. The Hindu scholar, S. Radhakrishnan notes that "one of the earliest Buddhist books [*Sutta Nipāta* 782] relates that Buddha condemned the tendency prevalent among the religious disputants of his day, to make a display of their own doctrines and damn those of others."[16] He also adds a reference (*Aṅguttara Nikāya* iii.57.1) according to which "Buddha encourages gifts to Buddhists by non-Buddhists as well. He admits the right of non-Buddhists to heaven. In the *Majjhima Nikāya* (i. p. 483) he mentions that a particular Ājīvaka gained heaven by virtue of his being a believer in Karma. Buddha held in high respect the Brahmins who led the truly moral life."[17] This is further confirmed by the extraordinary case of Upāli. "Once in Nālandā a prominent and wealthy householder named Upāli, a well-known lay disciple of Nigaṇṭha Nātaputta (Jaina Mahāvīra), was expressly sent by Mahāvīra himself to meet the Buddha and defeat him in argument on certain points in the theory of Karma, because the Buddha's views on the subject were different form those of Mahāvīra. Quite contrary to expectations, Upāli, at the end of the discussion, was convinced that the views of the Buddha were right and those of his master were wrong. So he begged the Buddha to accept him

as one of his lay disciples (*upāsaka*). But the Buddha asked him to reconsider it, and not to be in a hurry, for "considering carefully is good for well-known men like you." When Upāli expressed his desire again, the Buddha requested him to continue to respect and support his old religious teachers as he used to."[18]

III

Just as one can identify anticipations of the concept of religious freedom in the doctrines of *adhikāra-bheda* and *iṣṭa-devatā* in Hinduism; and *upāya-kauśalya* and the Kālāma Sutta in Buddhism, it is possible to similarly identify elements of religious freedom in the Chinese doctrine of *san-jiao heyi* (or "the unity of the three faiths").

Historians note that by the time Ming Dynasty (1368–1644) came to its end, Buddhism had found a permanent place in Chinese civilization.[19] This meant that, along with Confucianism and Taoism, Buddhism had become a part of the Chinese religious landscape. While it is true that proponents of each continued to emphasize their relative superiority, teachers such as Jiao Hong (1540–1620), who considered the three teachings to be one, were equally if not more popular. There was the implication that each tradition "merely uses separate language to articulate its truth and that three could and should be believed."[20] The following citations convey some sense of "this era's delicate balance of combination and compartmentalization between these faiths":

> Use Buddhism to rule the mind, Daoism to rule the body, Confucianism to rule the world.
> —Emperor Xiaozong (1163–1189)

> Although the Three Teachings are different, in the arguments they put forward, they are One.
> —Liu Mi (active 1324)

> If someone is a Confucian, give him Confucius; if he is a Daoist, give him Lao Zi; if he is a Buddhist give him Shakyamuni; if he isn't any of them, give him their unity.
> —Lin Zhao'en (1517–1598)[21]

IV

Two concepts from within Judaism, it seems, can be placed in positive apposition with modern notions of religious freedom. These are the doctrines of the Noahide Covenant and the Righteous Gentile.

Judaism can of course be traced back to God; but also primarily to Abraham and Moses, under whose leadership God entered into a covenantal relationship with the Hebrews, who were to be a light unto the nations. But what about these other nations themselves, the gentile nations (called *goyim* in Hebrew)?

The question was answered in Rabbinic Judaism, that is to say, the kind of Judaism which came to flourish after the destruction of the temple by the Romans in 70 C.E. The answer was formulated in terms of a covenant which God made with Noah, before God made one with Abraham and Moses. The point to specially bear

in mind is the fact that whereas the covenants associated with Abraham and Moses involve the Jewish people, the covenant made with Noah is associated with all people or humanity in general.[22] The account may be summarized as follows. Humans are exiled from heaven for disobeying God's will but still,

> Again and again, however, according to the scriptural stories, the people disobey God's will. One of the legends recounted concerns Noah, the sole righteous man of his generation. According to the narrator, who attributes thought and emotions to God, God despairs of the general wickedness of humans, regrets having created them, and sends a great flood "to destroy all flesh under the sky." But with Noah, God establishes a covenant and gives directions for the building of an ark which saves Noah's family and two of each of God's creatures. God promises never again to destroy the created world or interfere with the established natural order, with the rainbow as a sign of this covenant "between me and all flesh that is on earth."[23]

In Rabbinic Judaism, the "rabbis linked the salvation of the gentiles explicitly to this covenant, for in it God promises mercy and deliverance to all humanity. The rabbis see God as giving non-Israelite nations specific commands, the so-called Noachic (or Noahide) commandments."[24] What are these commandments? They are said "to vary from 6 to 10, depending on the rabbinic commentary on scripture that one consults, but they are conventionally called the seven Noachic commandments. They include prohibitions against blasphemy, idolatry, bloodshed, incest, and theft, together with eating flesh of living animals. Added to these is often the recognition of the true God."[25]

The Noachic commandments were also utilized in Rabbinic Judaism to acknowledge the religions of Christianity and Islam, which succeeded Judaism.[26]

The following remarks of Alan Segal are highly significant in the present context:

> *Rabbinic Judaism drafted a universalism similar to current North American notions of cultural pluralism.* Jewish intellectuals argued, in effect, that all worshippers of the one God, including the three Abrahamic faiths, should tolerate and respect one another. Both Islam and Christianity developed legal notions of the toleration of Jews—but as their own predecessors, rather than in the name of humanity. Obviously there are many examples of intolerance towards Jews in both Christian and Muslim lands, but these were illegal actions within the structures set up by both religious domains. Nor is it true that Jews always lived up to the rabbinic notion of the salvation of all righteous, whether Jewish or not.[27]

There were two questions to be answered by the Jews in relation to the non-Jews, one which pertained to the earth, and the other which pertained to heaven. These key questions were whether God has accommodated non-Jews covenantally, and was he prepared to accommodate them celestially.

The first question could be answered in the positive by taking the Noahide covenant into account, but what of the second question: Could non-Jews enter heaven?

This question was also answered positively in Rabbinic Judaism, on the ground that it is the righteous who are said to enter heaven, and not Jews, which then opened up the path for the righteous non-Jew to enter heaven as well. The following extract illustrates how this conclusion was reached exegetically.

> Rabbi Eliezer said: "All the nations will have no share in the world to come, even as it is said, 'The wicked shall go into Sheol, and all the nations that forget God' [*Psalm* 9:17]. The wicked shall go into Sheol—these are the wicked among Israel." Rabbi Joshua said to him: "If the verse had said, 'The wicked shall go into Sheol with all the nations,' and had stopped there, I should have agreed with you, but as it goes on to say 'who forget God,' it means there are righteous men among the nations who have a share in the world to come" (*Tosefta Sanhedrin* 13:2).

> Rabbi Jeremiah said: "Whence can you know that the gentile that practices the law is equal to the high priest? Because it is said, 'which, if a man do, he shall live through them'" [*Leviticus* 18:5]. And it says, "This is the Torah of man" [*2 Samuel* 7:19]. It does not say, "the law of the priests, Levites, Israelites," but "This is the law of man, O Lord God." And it does not say, "Open the gates and let the priests and Levites and Israel inter," but it says: "Open the gates that the righteous may enter" [*Isaiah* 26:2]. And it says, "This is the gate of the Lord, the righteous shall enter it." It does not say, "The priests and the Levites and Israel shall enter it" [*Psalm* 118:20]. And it does not say, "Rejoice ye, priests, Levites, and Israelites," but it says, "Rejoice ye righteous" [*Psalm* 33:1]. And it does not say, "Do good, O Lord, to the priests and the Levites and the Israelites," but it says, "Do good, O Lord, to the good" [*Psalm* 124:4]. So even a gentile, if he practices the Torah, is equal to the high priest (*Sifra* 86b; b. Baba Kamma 38a).[28]

A point of connection between Judaism and Buddhism on this register may be of interest. It has been pointed out that although the rabbis derived the ordinances of the Noahide covenant "from what they took to be scriptural revelation enabling the whole human race to know the meaning of righteousness," these commandments are also "consonant with universal human reason. They are universally recognizable moral imperatives like 'natural' laws. Not only Jews but pious pagans in the late Roman Empire could justify ethical monotheism philosophically."[29] We noticed how the Buddha also appealed to universal reason, when offering his own guidance to the perplexed.

V

On the face of it, the case of Christianity seems to present special problems in the context of religious freedom. The Roman world in which Christianity arose was characterized by religious pluralism, famously if somewhat cynically reflected in Gibbon's comment that the believers regarded the various gods as equally true, philosophers as equally false and magistrates as equally useful. The early Christians contributed to this pluralism, but also stood apart from it. In doing so they were abiding by Hebraic monotheism, but, from the Roman point of view, they were guilty of insubordination by refusing to conform to civic gods and rituals. Such persecution, often intermittent, did not prevent the spread of Christianity. It finally ended when Constantine won the empire after "the reported vision of cross in the heavens, with the words 'conquer in this sign,' coming on the decisive battle in 312 that gave him control of Western half of his empire in his rise to power."[30] Constantine issued an edict in 313 allowing Christians the freedom to practice their religion. During the reign of Theodosius I (r. 379–395), however, the empire became

officially Christian. Religious freedom was won by the Christians but it ended in its denial to others. It is only after the secularization of Christianity[31] in the modern times that religious freedom becomes a part of the constitutional dispensation in formerly Christian countries. These facts tend to create the impression that Christianity could not probably harbour ideas hospitable to religious freedom.

Christianity has, however, also wrestled with issues of religious plurality in ancient and modern times like other religions, for the Christian claim of possessing a universal message, which is at the same time unique, turns the existence of other religious communities into a problem. Willard Oxtoby writes:

> The faith of other communities is a theological problem not for those communities but for Christianity's claim to be a message both universal and unique. In ancient times, Christians already pondered the issue of salvation for pre-Christian pagans whose morality was above reproach, and one theory treated positive features of pagan religion resembling Christianity as demonic imitations set as traps to test the unwary Christian faithful.
>
> Medieval Latin Christianity reasoned that God must necessarily will the salvation of all in Christ, whereas the logic of Calvinism held that God predestines some to eternal damnation. Twentieth-century theologians have continued to work from these premises. The Catholic Karl Rahner takes up the idea of universal salvation, considering Hindus, Buddhists, and others to be "anonymous" Christians—that is, implicitly Christian without their acknowledging it. The Protestant Karl Barth applies the dialectic between God's chosen and others to view all other religions as mere human striving, in contrast to the gift of divine grace and revelation he holds to be unique to the cross. Each of these views operates within a syllogistic doctrinal circle.[32]

Nevertheless, it could be argued that, if one distinguishes adequately between figure and example of Jesus Christ and the Christian Church founded around him, and recognizes that the "creedal backbone" and "institutional skin" of a religion stand "in a questionable relationship to [the] original event and idea,"[33] then room is created for offering the following comment by Willard G. Oxtoby:

> By what Christian standards can the late twentieth-century Church convince itself that it should listen to, and appreciate *on their own terms*, the views of others? I have argued in a 1983 book that the figure of Jesus provides a model and warrant for openness to the identity of one's fellow human being. The personal and moral example of Jesus is surely as central to the Christian tradition as its doctrinal formulations are. Many Christians remain convinced that their gospel tolerates no concessions to rivals. But while logically one is to assert doctrine as true, morally one is to love one's neighbour. Pluralism presumes a human community whose common values may yet override the particularism of traditional Christian theology.[34]

The point is that while statements about Jesus, and sometimes by him, leave the impression that religious freedom to achieve salvation outside of Christianity does not exists, the *figure* of Jesus points in a different direction. It is true that John 3:16[35] describes Jesus as the only begotten son and in John 14:6 Jesus identifies himself with the way, the truth and with life,[36] yet

> If the foregoing were all that there were to Jesus' word and example, the central problem of this book might be easily dismissed. But the figure of Jesus also sets aside communal boundaries and exclusive notions of truth. For example, the parables of Jesus appeal not to particular scriptural revelations but to universal human experiences. Certain parables

> state a universalist ideal quite explicitly: the parable of the good Samaritan, for example, which tells us that the truly good person was not the priest of one's own community but the magnanimous outsider.

> Indeed, the most telling argument and the most profound challenge to take other people and their traditions seriously comes from Jesus' own word and example. He was the one who defied social pressure to associate with the "tax collectors and sinners." He was the one for whom wealth and status meant nothing in themselves, for whom a poor person's simple devotion could outweigh the pious prayers of even the high priests. When Jesus met the woman at the well in Shechem, he showed himself ready to accept another human being as a child of God regardless of national identity or personal background. Jesus' attitude toward other persons as individuals exhibits a consistency with his golden rule, to treat the other person the way you would wish to be treated yourself.[37]

A second Christian concept, apart from the figure of Christ, which might provide room for religious freedom within Christianity is that of the anonymous Christian. The approach can be traced back to Paul himself. In Acts 17, "Paul tells the Athenians that he appreciates how religious they are. They even have an altar 'to an unknown god'; and Paul tells them that this God they already worship is the same God he proclaims."[38] The idea has been developed in modern times by Karl Rahner (1904–1984).

> The brunt of the message is that Hindus, for example, are to a certain extent Christians already—without their knowing about it. This position holds that God, through his grace, is using the other religions to bring people to himself. Christ comes, unknown, to the Buddhist and the Hindu, who are oblivious to his coming and to the necessity of faith in him for salvation. But no matter; in this view, God in his grace is preparing them to receive Christ.[39]

It could be argued that "Rahner's reliance on the anonymity of grace to 'baptize' the faith of others without their knowing it, popular among Catholics, is . . . unrealistic, for too many of us are aware that *we* could just as well be considered anonymous *Buddhists*, and that alleged Christians who do not profess the name of Christ are not very impressive as a church."[40] Nevertheless, it provides grounds for accepting others on Christian terms if not their own, thereby entitling them to religious freedom in Christian eyes.

It needs to be further realized in the context of religious freedom that

> The search for truth, understood in doctrinal terms, has always been highly valued in the Christian tradition—more so than in a number of other religions. Yet true belief is not the sole concern of Christian commitment or the defining characteristic of Christian identity. The Gospel authors said, "Believe," but they also report Jesus as saying, "Love." The core of Christian identity lays on us an obligation to love our neighbor—including our non-Christian neighbor—that must be weighed against the obligation to assert the truth of our creed. What, then, if our insistence on preaching our belief is an offense to the integrity and identity of our non-Christian neighbor? Christ's commandment to love that neighbor may imply that we curtail our insistence on our own rightness. Put simply, to tell the Hindu, for example, that he cannot find salvation or fulfillment in his own tradition and community is morally a very un-Christian thing to do.[41]

VI

The Islamic concept, which provides a point of entry for examining religious freedom within Islam, is that of people with a book (or *ahl al-kitāb* in Arabic). The following note explains the core idea:

The People of the Book

> The People of the Book are those who possess sacred books, chiefly Jews and Christians. Although Islam condemns Judaism and Christianity as distortions of the true religion, it accords them a special tolerance not shown to other religions. Within Islamic territory, according to Moslem law, polytheists must be given the choice of conversion or death. The People of the Book, however, must be allowed to continue to practice their faith. On the other hand they are prohibited from making converts, and they must pay a special tax and wear distinctive clothing. In practice under Moslem governments the enforcement of these rules varied greatly from place to place.
>
> In time this classification was extended to the Zoroastrians, in Persia, and to the Hindus, since they also possess sacred books.[42]

People with a book were thus allowed a certain measure of religious freedom in an Islamic state. It has been pointed out that such people were definitely citizens, if second-class citizens by certain standards.

The doctrine of *ahl al-kitāb* may come across as a kind of an accommodation, even a grudging accommodation, when viewed purely from the point of view of Islamic jurisprudence. But when the concept is placed in the context of the history of Islam it acquires a dynamic quality, to which the following discussion testifies.

There is first the case of Zoroastrianism, a case which gained legal urgency after the Arab conquest of Persia. Zoroastrians are *not* mentioned in the Qur'ān as a people with a book but were nevertheless accorded similar privileges. Mahmoud M. Ayoub observes:

> With the coming of Islam and the conversion of most Iranians to it, Zoroastrianism was reduced to minority status. Muslims handled the Zoroastrians theologically, like the Christians and Jews of Arabia, as pre-existing scriptural monotheists, "People of the Book." In effect, for all practical purposes, Ahura Mazda was equated with the God of Abraham and the *Avesta* was sufficiently scriptural to be placed in a category with the Torah and the Gospel, both of which are mentioned favourably in the *Qur'ān*. Moreover, Zoroaster came to be handled as a prophet. *Since these developments were not inevitable, Zoroastrianism could have been proscribed.*[43]

How active an issue the question of religious freedom was in early Islamic history may also be gauged from the fact that rulers who went out to administer new domains had to come to grips with is. This is illustrated well by the following account:

> Among these was Mu'ādh b. Jabal, a man of the Anṣār (the Prophet's "helpers"), well known for his religious knowledge. Before sending him to the Yemen, the Prophet is said to have had the following exchange with him. The Prophet asks how in his rule Mu'ādh would deal with the People of the Book (Jews and Christians), which is what most people

in Yemen were. Mu'ādh answers that he will deal with them in accordance with the Book of God and the *sunnah* of his Prophet. The Prophet asks what will happen if he does not find the answer to a problem in either of the two sources. Mu'ādh answers, "I would then use my reason, and would spare no effort."[44]

Islamic history even seems to hark back to a period when all that was required for anyone, who was part of the Islamic community, to secure one's religious freedom was the acceptance of monotheism (a requirement Locke might have approved). For we learn:

It seems that initially only the first declaration of the *shahādah* was required of non-Muslims to be admitted into the Muslim *ummah*, or at least to be granted the legal status of a protected people: Jews, Christians, and other scriptural communities or "People of the Book." This conclusion is supported by another widely accepted tradition, in which the Prophet says:

I have been commanded to wage war against people until they say "There is no god except God." When they say this, they protect from me their lives and their possessions, except what is required of them [as the *zakāt* alms], and their final reckoning is with God.[45]

Finally, how the principle could be deployed innovatively can be seen even in later Islamic history. One of the people mentioned in the Qur'ān as people with a book are the elusive Sabians. It has been pointed out regarding the Muslim scholar, Al-Shahrastānī (1086–1153) that

Among the novel aspects of his eclectic methodology is his reliance on a group of neoplatonic spiritualists known as the Sabians, with whom he probably came into contact while in Baghdad and to whom he ascribes both a limited concept of prophecy and a rational system of statutes and ordinances. By upgrading the theological status of the Sabians, he is able to stretch the category of *ahl al-kitāb* ("people with a book") to accommodate non-Muslims such as Sabians, including Indian Brahmans, Buddhists, and even some enlightened idolators, into an ecumenical Muslim worldview.[46]

It is clear therefore that while all religions may not possess an identical concept of religion, all religions seem to contain currents of religious tolerance which anticipate the concept of religious freedom in some measure. It is important to know this, lest the lack of unanimity on the understanding of religion among the various religions makes one skeptical of finding resources for religious freedom within them.

Notes

1. Clapp (1967, p. 501).
2. Ibid.
3. Ibid.
4. Ibid., pp. 501–02.
5. Mahadevan (1971 [1956], p. 21).
6. Bhattacharya (1953, p. 252).
7. Klostermaier (1994, p. 348).
8. Lipner (1994, p. 189).
9. Radhakrishnan (1993 [1927], p. 34).
10. Ibid., p. 32.
11. Lipner, op. cit., p. 189.

12. Sharma (2005, p. 17).
13. Pye (2005, pp. 9484–85).
14. Rahula (1959, pp. 2–3).
15. Rock Edict XII, cited in Walpola, op. cit., pp. 4–5.
16. Radhakirshnan, op. cit., p. 41.
17. Ibid., p. 41.
18. Rahula, op. cit., p. 4.
19. Esposito, Fasching, and Lewis (2006, p. 448).
20. Ibid.
21. Ibid.
22. The question of the relationship of these various covenants cannot be pursued here but is potentially relevant. Consider, for instance, the following comment by Oxtoby (1983, p. 23): "This special relationship is expressed in the notion of 'covenant.' The first expression of covenant, as the narrative stands, is the covenant God offers to Noah, and by implication to all of humanity, in Genesis 9. God will preserve humanity and not again virtually annihilate the species with an all-submerging flood. We find later specific expression of covenant with the leaders and people of Israel. It is a debatable point whether one can argue from the ordering of the covenant with Noah in the narrative to the logical priority of God's concern for all people. But surely one interpretation of the covenant with Abraham in Genesis 12 is that, in the light of the covenant with Noah, it implies the special responsibility of the people of Israel to convey God's blessing to everyone."
23. Fisher (1997, p. 220).
24. Segal (1996, p. 79).
25. Ibid.
26. Ibid. Alan Segal notes that so far as Islam is concerned: "The rabbis came to acknowledge Islam as consonant with the intent of the Noachic commandments. Islam had a strict monotheism and rejected the making of images. Sometimes the same was posited of Christianity. On the other hand, the rabbis sometimes balked at making theological room for Christianity, with its Trinitarian doctrines and its rich Roman and Eastern traditions of devotion to *eikons* or 'images'" (ibid.). Similarly, in relation to Christianity, "Some rabbis, especially those living in Christian countries, pointed out that while Christianity is not strict monotheism because it associates a mortal and his image with God, which is *shittuf* ('associationism') or a 'two powers' heresy forbidden to Jews, righteous Christians could still count on eternal life, however, because the Noachic commandments do not specifically prohibit *shittuf* for gentiles. Other rabbis, often living in Muslim lands, judged Christianity as a violation of monotheism, as did the Muslims, by means of the Muslim rejection of associationism, the elevating of any thing or being to divine status alongside God" (ibid.).
27. Ibid., pp. 79–80, emphasis supplied.
28. Ibid., p. 63.
29. Segal, op. cit., p. 79.
30. Oxtoby (1996, p. 226).
31. Oxtoby (1983 , pp. 59–60).
32. Ibid., p. 342.
33. Hick, op. cit., p. 112.
34. Oxtoby, op. cit., p. 343.
35. Note though that this is "a theological statement *about* Jesus" (Oxtoby, 1983, p. 31).
36. There are more generous ways of understanding even this statement. Willard G. Oxtoby writes (*The Meaning of Other Faiths*, p. 97): "Still, the notion of 'truth' as action deserves attention. A passage in John 14, one of the principal proof texts used for Christian exclusivism, reads, 'I am the way, and the truth, and the life; no one comes to the Father, but by me.' Notice that the word 'truth' is sandwiched between 'way' and 'life.' Far from being a repudiation of other religions as teachings, this passage can be taken as promoting Christ-like action as the criterion of faithfulness." Similarly, the great commission in Matthew may also be capable of being revisited. Willard G. Oxtoby notes (ibid., p. 32): "Jesus voices his desire that his way

of discipleship be for everyone. 'Go therefore,' some manuscripts of Matthew's Gospel quote him, 'and make disciples of all nations' (28:19). This passage, though frequently cited in support of a universal Christian claim to truth, also serves as evidence for a central Christian concern for all humanity. It is this urge toward universality which was later to turn up in the adjective 'catholic' applied to the church, meaning 'universal.' We cannot be sure that Jesus foresaw the divisions which would emerge in later centuries among the body of his followers; perceptive observer of human nature that he was, he well might have predicted them. But it is significant, and central to any present-day effort to state a Christian understanding of the religions, to note that for every branch of Christendom—Eastern Orthodox, Roman Catholic, Protestant—the figure of Jesus remains central. His word, his example, and his person are the norm by which all Christian thought and behavior must be judged."

37. Oxtoby, op. cit., pp. 31–32. It is worth noting that Jesus comes as an *original* teacher so that his own actions and statements possess a unique valence. Willard G. Oxtoby notes for instance (ibid., p. 43): "Jesus takes into his own hand the question of authority of interpretation. A recurring formula in the Gospels is 'You have heard...but I say to you....' In some cases the appeal is to one scriptural authority rather than another, but in others his appeal is to general common sense or personal authority. To argue with tradition is not new with Jesus; the prophet Jeremiah proclaimed a new covenant in people's hearts to update the covenant of Sinai, and both Jeremiah and Ezekiel refute the traditional notion of inherited guilt, citing and denying the proverb, 'The fathers have eaten sour grapes, and the children's teeth are set on edge.' But for Christians it is with Jesus most of all that a self-confidence in the face of traditional authority serves as evidence of a special status. The people were astonished because 'he taught them as one who had authority, and not as the scribes.'"
38. Oxtoby (1983, p. 53).
39. Ibid., p. 55.
40. Ibid. In a similar spirit, "Some in India, for example, have suggested that the Upanisads are the real 'old testament' of the Indian Christian and should take rank at least on the same level as the Hebrew scriptures. The nature of this quest is neatly summed up in the title of a book by Panikkar, *The Unknown Christ of Hinduism* (1981). Genuinely indigenous theology is still in its beginnings, and it has to be confessed that the reapings in this field are still rather scanty; but what there is gives promise of a richer harvest in days to come" (Neill 2005, p. 6086).
41. Oxtoby (1983, pp. 101–02).
42. Burke (1996, p. 253).
43. Ayoub (1996, pp. 185–86), emphasis added.
44. Ibid., pp. 410–11.
45. Ibid., p. 377.
46. Lawrence (2005, p. 8267).

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Chapter 9
Attitudes Toward Conversion in World Religions

I

The right to change one's religion is widely accepted as a key component of religious freedom. The famous "four freedoms" speech of Franklin Roosevelt in 1941 included "the freedom of speech and expression, freedom to worship God in one's own way, freedom from want and freedom from fear."[1] This does not refer to the right to change one's way of worshipping God explicitly but by the time the content of religious freedom began to take shape in 1947, in the deliberations which led to the formulation of the Universal Declaration of Human Rights, the two became closely associated. Charles Malik, one of the members of the drafting committee, played a major role in bringing this about:

> Perhaps the most consequential decision at this stage was to adopt Malik's proposal that a right to change one's beliefs be added to the religious freedom article. He was moved to make the suggestion, he said, because his native Lebanon had become a haven for people fleeing religious persecution, some because they had changed their religious affiliation. At the time, Lebanon was still known as a cosmopolitan country where many ethnic and religious groups seemed to coexist in relative harmony, though its precarious equilibrium was threatened by the recent influx of refugees from nearby Palestine. Malik's amendment, which survived in the final Declaration, touched a nerve in other states with large Muslim populations, because of the Koranic injunction against apostasy (*murtad*) and the deep resentment of Christian missionary activity. The language was a major factor in Saudi Arabia's decision to abstain from the final vote on the Declaration.[2]

It might therefore be useful to analyze the attitudes towards conversion found in the various world religions.

The Hindu Attitude to Conversion

Hinduism has displayed several divergent tendencies throughout its long history on this point but there is nevertheless a broad consensus among scholars that Hinduism tends to be opposed to conversion either way—both to or from it, specially when it takes the form of breaking with one's previous religious attachment in the process.

A. Sharma, *Problematizing Religious Freedom*, Studies in Global Justice 9,
DOI 10.1007/978-90-481-8993-9_9,

S. Radhakrishnan has pointed out how some form of missionary activity was not inconsistent with Hinduism, but such conversion was largely gradual and informal.[3]

This process has been a steady one in the history of Hinduism. M.V. Nadkarni, writing decades after S. Radhakrishnan, identifies it in an even broader context as follows:

> It is commonly assumed that proselytization was not the instrument of Hindu inclusiveness. It is true that many foreign invaders were assimilated into Hinduism without any attempt at proselytization but simply through a natural process of sanskritisation over a period of time. This was achieved without any formal ritual of conversion into Hinduism as such, and they often maintained their identities as separate castes or communities within Hinduism. No force was necessary for the purpose. However, formal conversions through *deekshā* ceremony started with Buddhism, and also attempts to propagate the religion both in India and abroad, particularly since the reign of Emperor Ashoka. A noteworthy feature of conversions to Buddhism is that force was never used for the purpose. Assimilation of tribes, including invading tribes, into Hinduism continued even after this, without any conversion ceremonies. However, the concept of *deekshā* was taken up by new individual sects during the medieval period, particularly by Shaiva, Veerashaiva, Shreevaishnava, and Vaishnava sects. Conversions, if ever it took place, was to a particular sect within Hinduism.[4]

In modern Hinduism, however, this principle on non-conversion, at least in a formal sense, was developed into a firm doctrine at the hands of Mahatma Gandhi, who has been immensely influential in determining the attitude towards the issue of conversion in modern Hinduism.[5]

Mahatma Gandhi was vigorously opposed to conversion either way. In the following passage, for instance, he takes aim at conversion *from* Hinduism:

> There is in Hinduism room enough for Jesus, as there is for Mohammed, Zoroaster and Moses. For me the different religions are beautiful flowers from the same garden, or they are branches of the same majestic tree. Therefore they are equally true, though being received and interpreted through human instruments equally imperfect. It is impossible for me to reconcile myself to the idea of conversion after the style that goes on in India and elsewhere today. It is an error which is perhaps the greatest impediment to the world's progress towards peace. "Warring creeds" is a blasphemous expression. And it fitly describes the state of things in India, the mother, as I believe her to be of Religion or religions. If she is truly the mother, the motherhood is on trial. Why should a Christian want to convert a Hindu to Christianity and vice versa? Why should he not be satisfied if the Hindu is a good or godly man! If the morals of a man are a matter of no concern, the form of worship in a particular manner in a church, a mosque or a temple is an empty formula; it may even be a hindrance to individual or social growth, and insistence on a particular form or repetition of a credo may be a potent cause of violent quarrels leading to bloodshed and ending in utter disbelief in Religion, i.e. God Himself.[6]

Gandhi was however equally critical of conversion *to* Hinduism. When it was rumoured that Miss Slade, a Western follower of his, had become a Hindu he responded as follows:

> The English press cuttings contain among many delightful items the news that Miss Slade, known in the Ashram as Mirabai, has embraced Hinduism. I may say that she has not. I hope that she is a better Christian than when 4 years ago she came to the Ashram. She is not a girl of tender age. She is past thirty and has traveled all alone in Egypt, Persia and Europe befriending trees and animals. I have had the privilege of having under me Mussulman, Parsi and Christian minors. Never was Hinduism put before them for their acceptance. They were

encouraged and induced to respect and read their own scriptures. It is with pleasure that I can recall instances of men and women, boys and girls having been induced to know and love their faiths better than they did before if they were also encouraged to study the other faiths with sympathy and respect. We have in the Ashram today several faiths represented. No proselytizing is practiced or permitted. We recognize that all these faiths are true and divinely inspired, and all have suffered through the necessarily imperfect handling of imperfect men. Miss Slade bears not a Hindu name but an Indian name. And this was done at her instance and for convenience.[7]

This attitude is not restricted to Mahatma Gandhi alone. The following exchange between Śrī Chandraśekhara Bhāratī Swāmī of Sringeri Pīṭṭha and an American tourist in 1953 is worth recounting here:

"Why must it be," impatiently demanded an earnest American tourist, "that you will not convert other peoples to Hinduism? You have such a beautiful religion, and yet you keep so many struggling souls out of it. If you say 'yes' I will be the first to become a Hindu!"

"But why," came the counter-question, "do you want to change your religion? What is wrong with Christianity?"

Taken aback, but not daunted, the tourist said, "I cannot say what is wrong, but it has not given me satisfaction."

"Indeed, it is unfortunate," was the reply, "but tell me honestly whether you have given it a real chance. Have you fully understood the religion of Christ and lived according to it? Have you been a true Christian and yet found the religion wanting?"

"I am afraid I cannot say that, Sir."

"Then we advise you to go and be a true Christian first; live truly by the word of the Lord, and if even then you feel unfulfilled, it will be time to consider what should be done."

To put the puzzled American at his ease the sage explained:

"It is no freak that you were born a Christian. God ordained it that way because by the *samskāra* acquired through your actions (*karma*) in previous births your soul has taken a pattern which will find its richest fulfillment in the Christian way of life. Therefore your salvation lies there and not in some other religion. What you must change is not your faith but your life."

"Then, Sir," exclaimed the American, beaming with exhilaration, "your religion consists in making a Christian a better Christian, a Muslim a better Muslim and a Buddhist a better Buddhist. This day I have discovered yet another grand aspect of Hinduism, and I bow to you for having shown me this. Thank you indeed."[8]

This position on the issue of conversion has not gone unchallenged.[9]

A distinction drawn by the National Christian Council is worth noting in this respect:

Conversion has been confused with proselytism, but there is a difference. The proselyte may have no inner change of life, hence he has no conversion. He is one who has passed from one religion to another, changing some external features of his life, manners and customs. But these may not correspond to any spiritual illumination, reconciliation and peace.[10]

Nevertheless, the overall Hindu position has again been reaffirmed in the age of globalization, though with diffidence, on account of the rise of political Hinduism or Hindutva:

> Hindutva emerged also because proselytizing religions reduced the domain of religion to worse than a market place where every one competes for more customers on the basis of unethical advertisement and mudslinging campaigns. The market is dominated naturally by those who pump in more resources for their campaigns. The rules of the game in the market place are laid down by the proselytizing religions. In a situation like this, Hindutva forces thought that a religion which said that all religions were equally valid and called for tolerance had no chance of survival. They decided to accept the rules of the game and fight, semitizing themselves in the process. There is nothing like a free and fair competition even in the market for economic goods and services and, in the name of principle of consumer sovereignty, it is the big corporations which have become sovereigns.[11]

M.V. Nadkarni then proceeds to salvage the neo-Hindu position as follows:

> This is no model for spiritual aspirants. Hindu ethos offers an alternative to homogenizing religions which protects cultural and religious diversity. The definition of religious freedom does not have to be based on unbridled competition between religions with free rein for money power. Hindu yogis brought the practice of yoga and meditation to Americans without the need of "conversion." Similarly, Hindus can imbibe the best of Islam and Christianity without having to convert. "All conversion is a conversion to exclusivism." Religious freedom then would mean that "every individual is free to explore the religions and practices of the world without being subjected to systematic marketing and conversion campaigns." This is how Gandhiji looked at the issue. This would create an environment of religious harmony, where there will be no scope for forces of intolerance whether it be Hindutva or Islamic and Christian fundamentalism.[12]

The Buddhist Attitude to Conversion

Unlike Hinduism, Buddhism makes no bones about being a missionary religion and how strong a sense of mission it possessed in the matter may be gathered from the following account.

> The zeal with which the Buddhists of all schools carried their gospel all over Asia, and the qualities that enabled them to do so, is well exemplified by the story of Purna, one of the earliest apostles of the dharma. He asked permission of the Buddha to go as a missionary to a barbarous country, called Sronaparanta. The Buddha tried to dissuade him, and the following dialogue developed:

> Buddha: "The people of Sronaparanta are fierce, violent and cruel. They are given to abusing, reviling and annoying others. If they abuse, revile and annoy you with evil, harsh and false words, what would you think?"
>
> Purna: "In that case I would think that the people of Sronaparanta are really good and gentle folk, as they do not strike me with their hands or with stones."
>
> Buddha: "But if they strike you with their hands or with stones, what would you think?"
>
> Purna: "In that case I should think that they are good and gentle folk, as they do not strike me with a cudgel or a weapon."
>
> Buddha: "But if they would strike you with a cudgel or a weapon, what would you think?"
>
> Purna: "In that case, I would think that they are good and gentle folk, as they do not take my life."
>
> Buddha: "But if they kill you, Purna, what would you think?"

Purna: "In that case, I would still think that they are good and gentle folk, as they release me from this rotten carcass of the body without much difficulty. I know that there are monks who are ashamed of the body, and distressed and disgusted with it, and who slay themselves with weapons, take poison, hang themselves with ropes or throw themselves down from precipices."

Buddha: "Purna, you are endowed with the greatest gentleness and forbearance. You can live and stay in that country of the Sronaparantas. Go and teach them how to be free, as you yourself are free."[13]

According to the Buddhist tradition, a nucleus of followers soon formed around the Buddha when he started preaching and "once the Buddha had consolidated a cadre of 60 Awakened monks, he sent them out as missionaries, charging them to travel and to proclaim the dharma for the benefit of the many, out of compassion for the world and for the welfare of divine and human beings."[14]

Conversion to Buddhism, however, did not curtail one's intellectual freedom, as might be supposed on the basis of the role of conversion in Abrahamic religions. It was a commitment, above all, to the moral rules of behavior appropriate for a lay followers, and to the rules of the monastic order once one became a monastic. Everyone, lay or monastic alike, subscribed to the triple formula known as the three jewels (*triratna*) or the three refuges (*triśaraṇṇa*), stating thrice that one sought refuge in the Buddha, the *dharma* (Teachings) and the *sangha* (order).

The minimum duties of a householder are summed up in what was traditionally known as *The Three Treasures*, or *Jewels*, and the observance of the five Precepts. The formula of the Three Jewels, which has been recited for more than 2,500 years, runs like this:

To the Buddha for refuge I go.
To the Dharma for refuge I go.
To the Samgha for refuge I go.

For the second time to the Buddha for refuge I go.
For the second time to the Dharma for refuge I go.
For the second time to the Samgha for refuge I go.
For the third time to the Buddha for refuge I go.
For the third time to the Dharma for refuge I go.
For the third time to the Samgha for refuge I go.

As for the five commandments, the accepted formula is:

1. *To abstain from taking life.*
2. *To abstain from taking what is not given.*
3. *To abstain from going wrong about sensuous pleasures.*
4. *To abstain from false speech.*
5. *To abstain from intoxicants as tending to cloud the mind.*[15]

The monks took a set of ten moral vows (*daśaśīla*) and undertook to abide by the rules of the Vinaya, the text which laid out these rules: "The monks were apt to attach extraordinary importance to observance of Vinaya rules. Monastic discipline was codified in the *prātimokṣa* rules. Different sects count from 227 to 253

of them."[16] The point to note is that Buddhism has exhibited great sectarian variety in all its phases but the rules of the order are "very similar in all sources,"[17] thus accounting for the interesting feature that Buddhist monks belonging to different sects could stay in the same monastery. All Buddhists subscribed to the *Four Noble Truths* but within its broad parameters Buddhism permitted a remarkable degree of doctrinal flexibility.

Thus while there is a process of conversion to Buddhism, what one converted to was quite an open matter rather than an open-and-shut matter. Conversion was characterized by a freedom to come and go. Even when the sacred words of Buddhism were rehearsed, right after the Buddha's death, in a gathering of 500 Awakened ones by Ānanda, "there was another monk who said that the sayings of the Lord, as he remembered them were quite different, and he was allowed to go in peace."[18]

Entry into the order ever remained an open option. In fact, in a famous sermon in which a disciple accuses Buddha of evading certain questions, he is told that the Buddha did not promise to answer such questions to begin with, when he initiated him into the Order and the monk was free to move on. This was in keeping with the Buddha's own past, in the course of which he spent time with at least two major religious figures but moved on when he felt like doing so. The same flexibility is exhibited in the history of Buddhism. In the famous persecution of Buddhism in China during the period of the Tang Dynasty in 845, "over 260,000 monks and nuns were returned to the laity."[19] Although this reversion was involuntary, it highlights the reversible nature of the relationship.

This historical feature of Buddhism finds a geographical expression in Thailand, where often young men join the order for a temporary period. It is customary even "for the king to spend a certain length of time in a monastery.... Formerly all young men in the country spent a few months studying in the temples and though this practice is still followed, it is not as widespread as before."[20]

Conversion to Buddhism does not of itself entail severing ties with one's earlier affiliation. This practice has now been introduced in a form of neo-Buddhism which has arisen in India, often referred to as Ambedkerite Buddhism. A person, upon embracing this form of Buddhism, not only recites the Triple Refuge but also takes some additional 22 vows such as the following:

1. I will not regard Brahma, Vishnu or Mahadev as gods and I will not worship them.
2. I will not regard Ram or Krishna as gods and I will not worship them.
3. I will not honour Gauri, Ganpati or any god of Hinduism and I will not worship them.
4. I do not believe that god has taken any avatar.
5. I agree that the propaganda that the Buddha was the avatar of Vishnu is false and mischievous.
6. I will not do the ceremony of *shraddhapaksh* (for the departed) or *pindadan* (gifts in honour of the deceased).
7. I will do no action that is inconsistent with the Dhamma of Buddhism.
8. I will have no rituals done by Brahmans.

9. I regard all human beings as equal.
10. I will strive for the establishment of equality.
11. I will depend on the Eightfold Path declared by the Buddha.
12. I will follow the 10 vows declared by the Buddha.
13. I will have compassion for all creatures and will care for them.
14. I will not steal.
15. I will not lie.
16. I will not follow any addiction.
17. I will not drink alcohol.
18. I will carry on my life based on the three principles in the Buddhist Dhamma of *dhyana*, *shila* and *karuna*.
19. I renounce the Hindu religion which has obstructed the evolution of my former humanity and considered humans unequal and inferior.
20. I have understood that this is the true Dhamma.
21. I consider that I have taken a new birth.
22. From this time forward I vow that I will behave according to the Buddha's teachings.[21]

Vows number (1), (2), (3), (4), (5), (6) and (19) are designed to break with Hinduism. These do not have a counterpart in the original vows.

Conversion in Confucianism

One needs to distinguish between conversion and missionary activity in relation to Confucianism. A.C. Graham notes regarding Confucius that "the idea of missionary activity to convert them [i.e. barbarians] would never have occurred to him."[22] Thus it is hard in this sense to describe Confucianism as a missionary religion. On the other hand, one could "convert" to it but not in the usual formal way by a confession of faith. Rather, "a European who wishes to become a Confucian would have to go to China and live the life of a Chinese gentleman."[23] The underlying reason for this is that

> Confucianism is not a body of ideas to which an unbeliever can be converted, but a way of life which could be practiced only within traditional Chinese society. A *ju* (the nearest equivalent in Chinese to our word "Confucian") was not simply a believer in Confucian ideas, but a scholar educated in the Confucian Classics. He was satisfied that the barbarians on the four sides of the "Middle Kingdom" would benefit by coming under the rule of the Son of Heaven, becoming civilized, and learning to follow the Way of heaven.[24]

One might describe Confucianism in this sense as "expansionist" but not "missionary" if these words are understood in a carefully tailored way. After all, Confucianism did make a notable impact on Korea and Japan. Confucianism had gained a foothold in Korea by the beginning of the Christian era and continued to be influential even after the spread of Buddhism. Official examinations on the Chinese Confucian pattern were introduced during the period of the Silla Dynasty

(668–935) and Confucianism continued to be a force during the Koryo Dynasty (918–1392). During the Yi Dynasty (1392–1910), the Five Classics and the Four Books even became the basis of the civil service examination.[25] Similarly, according to tradition "Confucianism was first introduced into Japan near the end of the third century, when a Korean from the southwestern realm of Paekche brought the *Analects* of Confucius to the Japanese court."[26] In any case, the form of Confucianism which reached Japan was already tinged by Taoist thought. Its influence is seen in the seventeen-article Constitution of Shotoku Taishi (573–621). Japan was further influenced by Confucianism, specially in the legal sphere, during the Tang period of Chinese history and its ethics became the basis of the feudalism of the Tokugawa period. Neo-Confucian ideas were introduced in Japan by Buddhist monks who were trained in China. Interestingly, the "Tokugawa Shogunate, eager to preserve order and stability, encouraged the development of Confucianism and Neo-Confucianism at the expense of Christianity, which had gained many followers in the sixteenth century as a result of missionary activities."[27] One sees here then an Asian preference for exemplary missionary activity as compared to the emissary missionary activity of the Christian kind. Therefore the point is not just a theoretical one. Perhaps one needs to distinguish here between emissary missionary activity and exemplary mission activity. One could posit such a distinction on the ground that in the former case one actively seeks out converts, while in the latter case one merely accepts them, if they are drawn to one by one's superior example. And even if one went in the midst of potential converts, such "conversion" as did occur would come about not because one sought them but because it came unsought. This seems be in line with the fact that "on one occasion he [Confucius] thought of going to live among the barbarians, and when it was suggested that he would find their boorishness intolerable, replied: 'Would they be boorish if a gentleman lived among them?' " (*Analects*, IX.13).[28]

If one must talk in these terms, then the main instrument of conversion for Confucius was education. A.C. Graham writes:

> Until quite recently it was assumed in Europe that the moral qualities inherent in noble blood would show themselves even in one who by some accident was brought up by humble parents, although a person who believed this also believed as a Christian that the noble might go to hell and the commoner to heaven. The former assumption is as alien to Confucianism as the latter is. Confucius declared that "by nature we are near to each other, by practice we draw far apart" (*Analects*, xvii.2) and taught anyone who came to him, irrespective of wealth or class, saying, "I have never refused instruction to anyone, even if he could bring no better present than a bundle of dried meat" (*Analects*, vii.7).[29]

This is confirmed by another consideration. It turns on Confucius' understanding of class distinctions. The point is explained by Graham as follows:

> The Confucian conviction that the qualities of the gentleman may be latent in the members of any class is reflected in the examination system by which the bureaucracy was recruited. Admission to the examinations, at first limited to the landlord class, was gradually extended to all except a few special pariah professions. Although the history of this process has not yet been fully explored, there is no doubt that during the last 500 years of the Imperial regime a continuous, if narrow, stream of candidates was rising from the merchants and peasantry into the ruling class. It may be noted also that, although a few Confucians have

> held that some men are good and others bad by nature, most discussions of human nature assume that natural inclinations are either good or bad, and either developed or suppressed by education, in all men alike. In the words of Mencius, "every man can become a Yao or a Shun" (*Mencius*, vib. 2).[30]

The Taoist Attitude to Conversion

There is not much in Taoist texts which addresses this issue directly but a survey of Taoist history seems to provide some useful insights. There can be no denying the potential appeal of Taoism, as "the problem of safeguarding and prolonging human life is fundamental to all Taoist beliefs and practices. Taoism is therefore closely linked with medicine, the military art of defence, charity and welfare."[31] Taoist philosophy also possess an appealing if seemingly passive dimension. It developed the view that Tao was

> the fundamental basis of all being. As such, however, it cannot itself *be* being but must rather be not-being. This not-being can be described as emptiness or oneness. Therefore Tao was universal, all-pervading, all-embracing, and indestructible. To avoid death and annihilation, then, nothing was more efficacious than to become like Tao or to unite oneself with Tao. Because Tao was emptiness, it was also silent, retiring and clear. Therefore if one wanted to be like Tao one had to become silent, to retire from worldly affairs and empty oneself of all personal desires. Not to be involved in any hustling business by day and to have no dreams by night was the ideal pursued by the sages of this school, which was mainly represented by hermits and scholars living in rural retirement. Their distinctive belief was that unification with Tao could be brought about by deep thinking and meditation, and that diet and breathing practices alone did not suffice. All through Chinese history the more advanced thinkers were attracted by the philosophy of this kind of Taoism.[32]

Besides, the numerous deities of Taoism could also become foci of worship for the believers. For instance, early on

> [t]he One became the first personification of Tao emanating itself into being. He is the first and greatest god of Taoism. As such this "Greatest One" was introduced into the official worship during the first Han Dynasty (206 B.C.–A.D. 8) and placed on top of the five legendary emperors. Later he received the honorific designation of *Yüan-shih t'ien-tsun*, "Celestial Venerable of the Mysterious Origin." During the Sung dynasty (A.D. 960–1229) this was replaced by the title "Pure August" (*Yü-huang*).[33]

The process evolved further and soon a trinity had emerged by the third century.

> The underlying idea of this Trinity was that Tao emanated itself into creation in three stages. Each stage came to be personified as a god. The first was the "Celestial Venerable of the Mysterious Origin" (*Yüan-shih t'ien-tsun*), the second the "August Ruler of the Tao" (*T'ai-lao tao-chün*), and the third the "August Old Ruler" (*T'ai-shang lao-chün*). Lao-tzŭ, the prominent saint of Taoism, was supposed to be an incarnation of the third. Besides this Trinity there was a great variety of Taoist gods and saints, continuously increased during the ages, who even in a larger treatise could not be exhausted.[34]

Moreover, Taoism aligned itself with what are women's rights quite early in its history. Passages from the Lieh-Tzü (Chapter 2) indicate that:

> In rural communities there existed a spirit of strong antagonism to the established customs of official Chinese society according to which girls were considered to be human beings of a minor value and in many cases drowned immediately after birth. Wives were practically the slaves of their mothers-in-law and their husbands. Taoist sects made vigorous propaganda against the drowning of female infants and seemingly aimed at a society in which men and women would be on a more or less equal footing. This accounts for the great number of women followers and even leaders in the ranks of popular Taoism.[35]

It is worth noting that, in the karmic calculus of Lü Tung-Pin (755–805), "saving a female child who was to be drowned" earns 50 points of merit.[36]

It is well known that a major Taoist rebellion occurred in A.D. 184, led by Chang Chio, a leader of the T'ai-P'ing sect. The following description of his activities clearly indicates a missionary dimension to it.

> Making use of the widespread discontent among the rural population caused by ever-worsening economic conditions, he collected huge bands of followers and formed them into a large organization. The missionaries and priests of Chang Chio were clad in yellow robes and his followers wore yellow head-gear as a distinctive mark. They are therefore usually known as the Yellow Turbans.[37]

Taoist history also records the creation of a utopia approximately between 188 and 215 A.D. "in a valley one the upper course of the Han River between Shensi and Szuchuan." Chang Lu is credited with establishing a Taoist state during the period which was

> Administered by a Taoist hierarchy, and the whole system was characterized by integrity, probity, mildness and tolerance. An offence, for example, could be repeated three times before action was taken against the offender and the punishment for lesser offences was to repair a hundred paces of road. From time to time the priest-administrator requested his subjects to hold a kind of self-examination of sins which might have passed unnoticed. A special feature of this state was the free hostelries, where travelers could spend nights and eat meals free of charge. In front of these places dishes were set out with food for the use of needy passers-by. The misuse of these institutions was punished by diseases inflicted by the spirits.[38]

It could be that apocalyptic rather than utopian visions are more suited for inspiring missionary activity but the power of such an example is not to be underestimated.

It is also possible that at times Taoists were specially active among certain groups. Chang Lu, for instance, collected five pecks of rice from his followers, which led to the sect being called the "Taoism of Five Pecks of Rice" (*Wu-tou-mi Tao*). It has been pointed out that this "was in fact the usual levy of the Chinese government collected from Tibetan and other natives, and from this we may already deduce that the majority of Chang Lu's subjects were Tibetans."[39]

Reform movements within Taoism, such as that of K'ou Ch'ien-Chih, confirm the impression of missionary vigour. After a revelation in A.D. 415, he felt divined entrusted with "the mission to purify and rectify instruction in Tao."[40] Much of actions clearly indicate a competitive approach in relation to Buddhism. For instance, his "first action was to banish the false doctrine of the three Changs (Chang Tao-Ling, Chang Heng and Chang Lu), in other words to bring Taoist ecclesiastical and monastic life (of which he was probably the originator) up to the level

maintained by the Buddhists and to make it acceptable to the higher classes of Chinese society."[41] He is associated with "the first attempt of the Taoists to oust the Buddhist 'Church' *en bloc* and take over their economic and spiritual power."[42] Moreover, Taoists, even when exposed to Confucian learning, did not allow it to impede their practices. Ko Hung, for instance, better known as Pao-P'u Tsü, who spent his life experimenting with cinnabar to produce a life-prolonging drug, "had a Confucian education and was well versed in the classics."[43]

The interaction among the three teachings was not always competitive. The aesthetic dimension of Taoism, for instance, as represented by its great painters, pervaded Chinese culture in general and it is widely felt that during the Sung dynasty (960–1279) "the trend of philosophical thought originally stemming from Taoism was definitely merged with Confucianism into what is known as Neo-Confucianism."[44]

It is worth noting that Taoist doctrines such as the *wu-wei* can at times produce the wrong impression in the present context. It is not always to be assumed that this state is to be reached "by folding one's hands in silence amidst the mountains and forests"[45] but rather implies taking no unnatural action. Certain kinds of missionary activity could be considered "unnatural action," but certain other forms of it could well be part of natural action.

That Buddhism continued to provide a foil for Taoism during the Tang period is further established by the fact that

> The monastic rules for Taoist monks and nuns were closely modeled on the "*Vinaya*"-rules of the Buddhists. The initiate had to sacrifice to the images of the highest Taoist gods and to hand in an application to them for acceptance into the monastic circle. Then he was pledged to keep the following commandments: not to kill, not to eat meat or drink alcohol, not to lie, not to steal, and to live in chastity. These commandments were steadily increased when he rose to higher monastic rank.[46]

It was also worth noting that with the moral fervour exhibited by Lü Yen or Lü Tung-Pin (755–805) and the popularity of the *Ka-Ying P'ien* (Book of Rewards and Punishments) during the Sung period produced an interesting consequence. "As many laymen tried to keep all those detailed regulations in their daily life, Taoism got the general reputation of being superior to Buddhism in matter of religious discipline."[47]

The influence of Buddhism on Taoism becomes even more apparent during the Sung dynasty. It was in the first half of the fifteenth century that this famous text of Taoism, the *Tao-Tsang*, was produced. It consists of 1464 works which are said to be "arranged in three sections in imitation of the Buddhist *Tripitaka*."[48] Taoist worship was also apparently profoundly influenced by Amidism during this period. Amidism had popular among the middle classes.

> So a new god, the "Pure August" (*Yü-huang*), was introduced by the Taoists and installed by the third Sung Emperor. He was made the supreme god of the official Taoist pantheon and considered to be the equivalent of the "Sovereign on High" of ancient Chinese theism and of the Amitābha of Amidism. The liturgy of this new god was copiously borrowed from the latter.[49]

Later developments in Taoism also illustrate this tendency to be inclusive and not just imitative of other traditions. Thus the Chüan-Chê sect or perfecting the true sect, founded in the thirteenth century, accepted elements derived from several sources.

> Its teaching was to be in harmony with Nature: one should be calm, tranquil, simple and at peace with oneself. This was achieved by an asceticism resembling that of the Manichees in some respects. The followers of this sect were hard workers, producing their own food, and striving for social independence. They were all regular Taoist priests who had renounced their homes and adopted a vegetarian diet, and who lived in monasteries. They fasted on certain occasions, did not marry, and abstained from alcoholic drinks. Another feature of this school is the tendency to combine the three religions, Taoism, Confucianism and Buddhism into one.[50]

Even more recent sects such as the "Hall of Tao" (*Tao Yüan*) or Society of the Tao and Tê (*Tao-Tê-Shê*), which was started in the 1920s and also spread to Japan, places the great Taoist god—the Greatest One (*T'ai-i*) on the altar but below it Confucius, Lao-Tsü, Buddha, and the symbols of Christianity and Islam also find a place.[51]

Even the great rebellions in China share in this syncretism. Thus the Taiping Rebellion of 1850–1865 near the end of the Manchu dynasty combined native and Protestant Christian impulses. Julia Ching notes that the "syncretism of the Taiping religion remains a precursor to other cults found in China even today, where nature and Christian beliefs sometimes blend with faith healing and other practices."[52]

It is clear therefore that although Taoism "has always been a peculiarly Chinese religion and was never propagated among non-Chinese people,"[53] it nevertheless provides enough material relevant to the discussion of conversion as a theme in world religions.

Jewish Attitude Towards Conversion

The Jewish attitude to conversion exhibits different dimensions of the issue at different times in its history. Abraham is content to leave the region of Canaan to his seed but Moses does ask the Pharaoh to accept his God, an offer which is declined. When the Jews do enter the Promised Land they conquer the earlier residents and do away with them rather than convert them.

Subsequently, however, the institution of marriage was destined to play a key role in the subsequent process of conversion, both during the royal period and later.[54]

The Babylonian exile created a new situation in this respect. Alan Segal notes:

> In the time of the Babylonian Exile, and as a direct consequence of it, the faith of Israel began to be maintained in scattered regions among other populations. Whereas one generally had had to live in the Hebrew kingdoms to be considered an Israelite, one could now be a Jew while living elsewhere. Conversely, the possibility now arose that people of various other origins might wish to be considered Jews.[55]

How did the Jews react to this situation?

> In the postexilic Judean community there were debates as to whether others could belong. The biblical book of *Ruth*... opts for an inclusivist position. Likewise, the point to the book of *Jonah* is that God cares about the people of Nineveh in Assyria, however reluctant

> Jonah might be to preach to them. Scholars remain divided, however, concerning how much energy Jews actually devoted to proselytizing in the Persian, Greek, and Roman world.[56]

Those who feel the level of proselytizing was low would explain it such terms as the following:

> Perhaps it was the need to live as a minority, as guests in foreign nations, that dampened Jewish proselytism. Seeking to convert the children of the host country would surely be seen as a very hostile and undesirable action. Indeed, proselytizing activity in medieval Christian and Islamic lands was punishable by death. In such a climate, active missionary work was necessarily curtailed; but Jews since ancient times have been content to receive converts who truly desire to join the Jewish people.[57]

The Hellenistic period is significant in this respect as well. It was during this period that the term "Judean" also acquired a religious connotation, apart from the geographical. Thus

> An inhabitant of this region, the former tribal territory of Judah, was known as a *yehudi*, a Judean. This is the source for the English word "Jew." But under the Persians and then the Greeks, *yehudi* usually meant simply "Judean." The term gained its modern sense of a member of the Jewish religion during the first and second centuries. The shift, just when the New Testament was being written, gave it a unique ambiguity then. But in the Persian period, ethnicity already had religious overtones.[58]

Rabbinic Judaism clearly recognizes the phenomenon of conversion. Thus

> Rabbinic Judaism came to specify three conditions for conversion: *milah* (circumcision, for men), *tevilah* (ritual immersion or baptism), and *kabbalat 'ol ha-mitzvoth* (accepting the yoke of the commandments). There are many stories of conversions in rabbinic literature. The rabbis sought to determine which candidates for conversion were sincere in their aspirations, for insincere converts endangered the community. They verified that converts were willing to cast their lot with this unfortunate and endangered people. With a yes answer, one was accepted. Usually conversions involved a period of training during which the candidate learned the extent of an adult Jew's specific responsibilities.[59]

In the case of the male, a circumcision is now required.

> When a male student is ready, the ceremony of circumcision is performed. Even an already circumcised man must undergo a symbolic shedding of blood for the conversion to be accepted. The difficulties surrounding this operation have always made conversion more popular among women than men.[60]

This is followed by ritual immersion, which involved total bodily immersion, in a facility known as *mikveh.*

> When a convert enters a *mikveh*, a court of three rabbis, termed a *bet din*, is usually convened at the site. The rabbis examine the candidate, from behind a curtain if the convert is a woman. They ask about the convert's willingness to perform Jewish rites and responsibilities. They also allow the convert to demonstrate the knowledge he or she has learned from instruction. Then the candidate submerges him- or herself completely in the *mikveh*, and upon coming up is a Jew in every respect. Converts are named as the son or daughter of Abraham and are given complete Jewish names, indistinguishable form those of other Jews.[61]

Although Judaism does not seek converts, it accepts those who seek it. But then when it happens, the conversion is total in the sense that "there is no way Jews

can leave the people of Israel once they have joined it by birth or conversions. One can apostatize; however, doing so does not remove one's Jewish identity but only changes one's status to that of a sinner."[62]

Any discussion of Jewish attitudes to conversion cannot escape the issue of Jewish particularism, and the allied issue of chosenness. Jewish particularism here refers to the issue of identity. R.J. Zwi Werblowsky explains:

> The implicit admission that the Bible, in spite of its universal import, is the book of a particular people or, to put it differently, is addressed to a particular people, enormously complicates our understanding of Judaism. It is a fact that Judaism has to this day remained the religion of one particular nation—Israel or the Jewish people. It is important to remind ourselves at the outset of this *historical fact* of national or group continuity, because it is often confused by the claim of the Christian Church to be the legitimate successor of Israel, viz. the "true" Israel. This claim, however, is a matter of theology only: it is not an historical fact and need not, therefore concern us here.[63]

The idea of chosenness, we noticed earlier, does not foreclose the possibility of others taking on a Jewish identity. It is interesting to note here that "one of the greatest problems of later Judaism was the question why the chosen people was more persecuted and humiliated than any other,"[64] so that the "rabbis verified that converts were willing to cast their lot with this unfortunate and endangered people."[65] The concept of being chosen can be understood in different ways, and many find it "awkward not only for seeming to violate principles of impartiality and fair play, but also because many early peoples' considered themselves special."[66] The Jews may be said to consider themselves special in a special way because

> It would be an interesting question whether this relation of near-identity between religion and nation exists of necessity or whether things might have been—or possibly have at times been—different. Although it appears that at some moments in its history Judaism was an actively missionary religion (cf. *Matthew* xxiii, 15) in the last resort it remained related to the Jewish people in a much more exclusive and intimate way than did the Christian Church to the English or Italian peoples for example (or even to Western civilization as a whole) or Islam to the Arabs. This ethnic limitation is undoubtedly a severe religious handicap in some respects, but on the other hand it certainly added a touch of realism to Judaism. The Jews tended to translate every religious experience and value into terms of history and social reality. They could not, by any theological device, such as the distinction between spiritual and secular spheres, divorce religion from the concrete situations and realities of national and political life. Rightly or wrongly, the prophets and writers of Biblical history interpreted defeats, exile and suffering as results of the failure to implement God's will in society. Religion could never be separated from the concrete history, material *and* spiritual, of a real, historic people.[67]

The Jewish attitude to conversion is particularly interesting for the concerns of this book, because although it is a member of the Abrahamic trinity of religions, namely Judaism, Christianity, and Islam, it does *not*, unlike Christianity and Islam, seek to convert everyone to Judaism.

> It was true that they were a chosen people, but this chosenness was a double-edged sword (cf. *Amos* iii, 2). They were covenanted to God in a special relationship whose validity was everlasting, much like the similar covenant with nature (cf. *Jeremiah* xxxi, 34–5; xxxiii, 20–1, 25–6), and there was no escape or respite from the required loyalty. Even unfaithfulness could not dissolve the Covenant; it would only bring judgment. Israel was God's

> chosen spouse, as a favourite metaphor of the prophet put it; as such she could be neither widowed nor divorced but only corrected and invited to return God's love and to return *to* God's love. The doctrine of election did not so much proclaim a privilege (as the more easy-going often liked to think) as a glorious destiny and an ineluctable fate. Israel was to live as a nation much as the priests lived as a class and the prophets as individuals. Like priests they should serve God in the sanctuary of their lives; like prophets they should listen to God's word and respond to it.[68]

The point is important. S. Radhakrishnan traces the aggressiveness of Christianity and Islam as proselytizing religions to Judaism. He writes:

> The intolerance of narrow monotheism is written in letters of blood across the history of man from the time when first the tribes of Israel burst into the land of Canaan. The worshippers of the one jealous God are egged on to aggressive wars against people of alien cults. They invoke divine sanction for the cruelties inflicted on the conquered. The spirit of old Israel is inherited by Christianity and Islam, and it might not be unreasonable to suggest that it would have been better for Western civilization if Greece had moulded it on this question rather than Palestine.[69]

One should note the reference, however, to the spirit of *old* Israel and recognize that what prevails today is Rabbinic Judaism, which in many ways is quite different from old Israelite religion. S. Radhakrishnan also remarks elsewhere: "The Jews first invented the myth that only one religion can be true."[70] As Wilfred Cantwell Smith remarks: "One sees what he means but the analysis is not, I think, exact. What the Jews asserted is that only one God is real; which one may regard as just as reprehensible, but it is not the same idea."[71] Once again one must appeal to Rabbinic Judaism and recognize that one does not have to convert to Judaism to be saved, a position on all fours with the mainline modern Hindu position.

The Christian Attitude to Conversion

Christianity is by far the most successful missionary religion in the world, judged by the number of converts made. Over 2 billion people in the world today count themselves Christian, out of a population of over 6 billion.

Indeed "mission, the extension of the Church beyond its existing frontiers, has been characteristic of the Christian fellowship from its earliest beginnings. In its claim to universal relevance, the Christian Church resembles the other great missionary religions, Buddhism and Islam,"[72] with which useful comparisons of Christianity can be instituted. Its Church resembles the Buddhist *saṅgha* as the institutional focus of missionary activity, but there is interestingly no counterpart to it in Islam, although Islam has also been remarkably successful as a missionary religion.

The missionary expansion of Christianity can be covered in the following broad phases: (1) from its inception until 313; (2) from then until c. 600; (3) from c. 600 to c. 1500; (4) from 1500 onwards.

The attitude to conversion in the first phase was strongly influenced by Christianity's Jewish connection, and by the fact of its location in the Roman Empire.

Jesus himself, as a member the Jewish community, had accepted people in his faith, but "the earliest followers of Jesus seem to have understood the universal dimension of their faith as the fulfillment of Old Testament prophecy (*Isaiah*, *Zechariah*), according to which all nations would come up to Jerusalem to receive the law of the Lord in the form of the new covenant in Jesus."[73] Stephen Neill points out, however, that two factors "reversed this original Christian understanding."[74] The first was the dispersion of the Jews as a result of persecution in Palestine, and the other was the attempt by some Christians to seek converts from among non-Jews. A double movement seems to have been involved. "By around A.D. 100, many more Jews lived outside Palestine than within its borders." [75] This meant that Judaism may have paved the way of conversion to Christianity of Jews as well as non-Jews. The big push into the gentile world was led by Paul. Just as the early expansion of Islam is a fact but relatively undocumented, "the Christian proclamation was carried out almost entirely anonymously; indeed, the names of the founders of great churches of the Roman Empire remain for the most part unrecorded. Yet this early work had surprisingly rapid success. Within a century of the death of the founder, churches came into existence in many parts of Asia Minor, in Greece, in Italy, in Egypt, almost certainly in France and Spain, and perhaps even as far away as India."[76]

The persecution of the Jews in Palestine was followed later by the persecution of the Christians in the Roman Empire, specially when the Christians refused to worship the image of the emperor. "A special exception was made of the Jews, as being what we would call 'conscientious objectors.' So long as Christians were part of the Jewish community, the exemption applied to them also. But when they separated themselves from the Jewish community they lost the exemption and became liable to persecution,"[77] which was sporadic to begin with but became systematic after 250, when carried out by Emperor Decius and subsequently. Although "not all Christians were persecuted all the time, and the number of martyrs was greatly exaggerated by tradition,"[78] the persecution had the effect of strengthening the movement with the blood of the martyr often becoming the seed of the church. It is worth noting that "the attitude of Christians towards heresy and other religions was one of toleration. No one should be compelled to confess any faith."[79]

The next phase is marked by the conversion of Constantine at the beginning of the fourth century.[80] Stephen C. Neill notes:

> From that time on, the resemblance between Christianity and the other missionary religions has been startlingly close. From the time of Asoka in India (third century B.C.E.) to Sri Lanka and Thailand in 1983, Buddhism has always maintained close relations with the ruling powers. In all Muslim countries, and in all those which have come under Marxist domination, the identification of the state with religion or ideology has been undisguised and taken for granted. But since Christians claim to be followers of the Prince of Peace, close connections between interests of state and interests of religion have proved a burden and an

> embarrassment rather than a help. Justinian, who reigned from 527 to 565, seems to have been the first Roman emperor to accept coercion as a legitimate instrument of conversion to Christianity.[81]

As a result, the Mediterranean world was almost entirely Christian by the year 600.[82]

The next phase of Christian missionary expansion is in some ways paradoxical. On the one hand, it fulfilled the vision of Gregory the Great (540–604) "who saw the importance of the world which lay to the north of Alps" and the conversion of Europe was completed. Several different elements brought about the same result. Charlemagne offered to the Saxons the choice the Prophet had offered to the Arabs; "he agreed to spare their lives on the condition that they accept baptism."[83] In the case of Scandinavia, people changed their religion along with the ruler. The conversion of Iceland (c. 1000) seems unique in that the matter was put to popular vote.

The model of top-down conversion, beginning with the ruler, applied in the case of Lithuania, when Jagiello converted in 1383. The Eastern Church spread its influence in a similar manner, with the conversion of Vladimir in 988, Grand Duke of Kiev which led to the creation of "the great Slavonic cultures, the Christian origins of which are not disputed even by Marxist opponents of religion."[84]

Conversions sometimes involved conflict with local traditions as, demonstrated by the story of Boniface felling the oak. "Such actions as Boniface's felling the oak of Thor at Geismar must not be misinterpreted as mere missionary vandalism. The people of that time believed that the powerful spirit who inhabited the oak would be able to take condign vengeance on any intruder, thus they expected Boniface to fall dead upon the spot. When he survived, they concluded that the god whom he preached was more powerful than their own."[85]

During this period, the Franciscan and Dominican movements in the thirteenth century even looked beyond Europe and an archbishopric was created even in Beijing.[86]

The next phase is determined and dominated by the rise of the West, which begins with the discovery of America by Columbus in 1492 and the landing of Vasco da Gama in Calicut in 1498. This period witnessed several major developments which need to be summarized. The rise of the Protestant movement meant the end of Roman Catholic monopoly on the missionary enterprise. The Lutherans sent their first mission to India in 1706 and the Baptists arrived in 1794. The other was the convoluted relationship between imperialism and missionary activity. The two were closely bound in the Portuguese case, but, with the British, the pattern varied with time and place. In northern Nigeria, the British even "clearly favoured Islam at the expense of Christianity."[87] The association of governments and missions was particularly close in German, Dutch, and Belgian colonies. A third area of interest developed around the manner in which Christianity was to interact with native cultures. The Portuguese, "following the precedent of Muslim evangelism in Europe, expected their converts to accept Portuguese names, manners,

and customs,"[88] but two Christian communities in India resisted this trend—the Thomas Christians in Kerala and the Parava converts on the Coromandel coast. Allied to this was the question of how far one might bend backwards culturally to promote Christian conversion? The Italian, Matteo Ricci, adopted the Chinese life style after he reached Beijing in 1601 and he and his colleagues were able to maintain their mission for three centuries.[89] Another Italian, Roberto di Nobili (1577–1656), adopted a Brahmanical life style to be an effective missionary among the Hindus. These steps however did not win the approval of Rome.

The process was not uniform. There were unexpected successes as well as disappointments. For instance "a 100 years ago, at the time of the Mutiny, there were many missionaries in India who sincerely believed that within a few generations the whole of India would become Christian,"[90] but what ensued were "new developments within Hinduism itself."[91] The decolonization of the globe in the twentieth century raised new issues for Christianity in the context of mission, so that "in our century, the need to re-think missions has been felt urgently, as several facts have come home to the churches of the Western world."[92] Willard G. Oxtoby mentions seven such facts: (1) Western Christianity is perceived as imperialistic; (2) major world religions such as Islam, Hinduism and Buddhism have "shown themselves remarkably resistant to efforts at conversion"[93]; (3) non-theological aspects of mission often evoke a more positive response than the theological; (4) indigenous churches are often ready now to take over the work of missionaries; (5) the forms of worship introduced by European Christianity are "utterly alien to African ways of thinking"[94]; (6) Christian denominational divisions have led to confusion in the mission field; and (7) "Christian exclusivism has not always had productive results in local societies. Requiring a profession of Christian faith for access to Christian institutions has had the negative result of producing hypocrisy among some who affiliate for expediency and also resentment among those excluded."[95]

The widespread acceptance of religious pluralism in the world today also poses a "challenge to missionary activity. If diversity is inherently desirable, then what right do we have to go out and try to convert others to our faith?"[96]

"No full and scientific study of the process of Christian conversion in the non-Christian world has yet been written"[97] and a number of factors could be involved. For some the appeal of Christianity may have lain in the simplicity of its message, and it has been said "that in India more people have been converted to Christianity by reading the first three chapters of *Genesis* than in any other way";[98] for others the appeal may have lain in the healing power it provides from evil forces. Yet others may have see in it an escape from the burden of such doctrines as belief in Karmic fatalism, or *kismet.* Some others may have been drawn to the image of a forgiving Christ. The cheerful example of shared love displayed by Christian communities, which so impressed the Romans in the early centuries of the Christian era, may have also impressed others in other times and climes. "Varied as the process may be," however, "in all there is a central unity. Christ himself stands at the center of everything. Only when the risen Christ is seen as friend, example, saviour, and lord can genuine Christian conversion be expected to take place."[99]

Islamic Attitude Towards Conversion

Islam sought converts from its very inception. The same could be said of Christianity, but with this difference, that while in Christianity Jesus famously instructs his followers to seek converts, the prophet of Islam sought converts himself as well. To begin with, his efforts were first directed towards members of his own family so that "his earliest converts were his own wife, Khadījah, his adopted children, Zaid and 'Alī, and some members of his immediate circle."[100] This might be viewed as a case of private missionary activity; in the third year of his mission the Prophet went public but without much success, as his tribe, the Quraish, did not respond. Thus from the family the focus had moved to the tribe. In the fourth year, he started living in the house of an earlier follower, Al-Arqam, whose house was in a place accessible to people in general. This led to several conversions, including that of 'Umar b. Al-Khaṭṭṭṭāb two years later. By now the body of converts had become large enough for them to be seen performing their devotions around the Ka'bah publicly.

The Prophet has received the first revelation around the year 610 and the decade had not produced many converts. The prophet now sought to extend the circle beyond family, tribe, and the city of Ka'bah, and made attempts to secure a following in the town of Ṭāif which was not successful. By comparison, the efforts to win converts in Yathrib were destined to be spectacularly successful. An early convert, Muṣ'ab b. 'Umair, had been sent there to spread the faith and the mission was "so successful that in the following year he was accompanied by more than seventy converts in the pilgrimage to Mecca."[101] The Prophet accepted their invitation to move to Yathrib, a migration accomplished in September, 622.

Islam now became a political force but did not lose its proselytizing character in the new situation. This is evident from the fact that when the Jewish tribes of Medina, as Yathrib was renamed in his honour, were accused of treasonable collaboration with the Meccans later and condemned to be executed, their members were given the option to embrace Islam. Only one person took up the offer. This conflict with the Meccans was finally resolved in favour of the Prophet, who returned to Mecca in triumph in 630, when "the Makkans capitulated and embraced Islam en masse."[102] With this, the Prophet had become the ascendant power in Arabia. The circle of converts had now spread in concentric circles beyond family, clan and city to embrace the whole country. The logic of this development pointed then in the direction of the world at large. This expectation is fulfilled, as one of the last acts of the Prophet was to write to the emperors of Byzantium and Persia, inviting them to accept Islam.

After the emergence of the Islamic state, as it were, in Medina during the time of the Prophet, one observes a growing overlap between religious and political identity as a Muslim, with the result that "the Arab tribes that submitted to the political leadership of Muḥammad accepted at the same time the faith that he taught."[103] It was the attempt by some of these tribes to challenge this equation which would lead to the so-called wars of apostasy, when "a number of the nomadic tribes around Madīnah, considering their pact with the Muslim community to have ended with

the death of its leader, refused to pay the *zakāt* alms. Sensing the danger in such fragmentation of the community, Abū Bakr insisted, 'By God, were they now to withhold from me even the rope of a camel's knee which they gave as *zakāt* to the messenger of God, I would fight them over it.' And fight he did."[104]

After the establishment of the Islamic state, as it were, even in the Prophet's time

> . . .of distinctively missionary activity there are only scattered notices, and for some time after the death of Muhammad there is a similar lack of evidence of distinctively proselytizing effort on the part of the Muslims during the expansion of Arab rule over Syria, Persia, N. Africa, and Spain, though in all these countries large numbers of persons from among the conquered populations passed over to the dominant faith. There is one notable exception in the case of the pious 'Umayyad Khalīfah, 'Umar b. 'Abd al-'Azīz (717–720), who was a zealous propagandist and endeavoured to win converts in all parts of his vast dominions from N. Africa to Transoxania and Sind.[105]

For exhortation to seek convert we need to turn to the Qur'ān, which was of course being constantly revealed during the course of the Prophet's lifetime. T.W. Arnold has described these stages with great clarity. To begin with, he points that,

> In the Qur'ān itself, the duty of missionary work is clearly laid down in the following passages (here quoted in chronological order according to the date of their revelation):
>
> "Summon thou to the way of thy Lord with wisdom and with kindly warning: dispute with them in the kindest manner" (xvi.126). "They who have inherited the book after them [*i.e.* the Jews and Christians] are in perplexity of doubt concerning it. For this cause summon thou (them to the faith), and walk uprightly therein as thou has been bidden. . .and say, In whatsoever Book God hath sent down do I believe: I am commanded to decide justly between you: God is our Lord and your Lord; we have our works and you have your works: between us and you let there be no strife: God will make us all one: and to Him shall we return" (xlii.14). "Say to those who have been given the book and to the ignorant, Do you accept Islām? Then, if they accept Islām, they are guided aright: but if they turn away, then thy duty is only preaching" (iii.19). "Thus God clearly showeth you His signs that perchance ye may be guided, and that there may be from among you a people who invite to the Good, and enjoin the Just, and forbid the Wrong; and these are they with whom it shall be well" (iii.99 f.). "To every people have we appointed observances which they observe. Therefore let them not dispute the matter with thee, but summon them to thy Lord: Verily thou art guided aright: but if they debate with thee, then say: God best knoweth what ye do" (xxii.66 f.) "If any one of those who join gods with God ask an asylum of thee, grant him an asylum in order that he may hear the word of God; then let him reach his place of safety" (ix.6).[106]

After Islam became firmly established in Arabia, the faith was to be preached to all nations, and all mankind were to be summoned to belief in the One God.

> "Of a truth it [*i.e.* the Qur'ān] is no other than an admonition to all created beings, and after a time shall ye surely know its message" (xxxviii.87 f.). "This (book) is no other than an admonition and a clear Qur'ān, to warn whoever liveth" (xxxvi.69 f.). "We have not sent thee save as mercy to all created beings" (xxi.107; cf. also xxv.1 and xxxiv.27). "He it is who hath sent His apostle with guidance and the religion of truth, that He may make it victorious over every other religion, though the polytheists are averse to it" (lxi.9).[107]

How deep the springs of mission are in Islam may be judged from the fact that

> In the hour of Muhammad's deepest despair, when the people of Mecca turned a deaf ear to his preaching, when the converts that he had made were tortured until they recanted and

> others had to flee from the country to escape the rage of their persecutors, the promise was revealed:
>
> "One day we will raise up a witness out of every nation" (xvi.86).[108]

The Islamic attitude to conversion may be compared with its attitude to the state. While early Christianity sought converts, early Islam sought the state. Professor Fazlur Rahman has argued that the attitude of Islam was comparable to that of Communism in this respect. Like Communism, Islam wishes to gain control of the state apparatus rather than insist that everyone become a Muslim, no more than a Communist state insisted that everyone must joint the Communist party. While, on the one hand, the capture of the state may have facilitated conversion to Islam, on the other, it also hindered it, because a Islamic state had to take care of all its citizens. At one point, a financial crisis was caused in the early Islamic empire on account of the fact that government revenues dropped off, when, as a result of mass conversions to Islam, *jizya* ceased to be a source of income. An interesting situation also arose in this regard towards the end of the Arab empire:

> With the decline of the Arab empire the Muslim world was faced with the task of converting its new rulers. The conversion of the Turks proceeded very slowly; the earliest converts appear to have been the Turkish soldiers who took service under the khalīfah in Baghdād; there are a few legends of proselytizing efforts in Turkestan, but the history of the conversion of the Turkish tribes is obscure, and Islām seems to have made little way among them before the tenth century, when the Seljūq Turks migrated into the province of Bukhārā, and there adopted Islām. The conversion of the main body of the Afghanis probably belongs to the same period or a little earlier, though national tradition would carry it back to the days of the Prophet himself.[109]

The Mongol invasions constitute an important watershed in the history of conversion to Islam. For one, they further illustrate the problem of converting the new rulers. "The first Mongol ruling prince to profess Islām was Baraka Khān, who was chief of the Golden Horde from 1256 to 1267; according to one account he owed his conversion to two merchants whom he met coming with a caravan from Bukhārā; but the conversion of their prince gave great offence to many of his followers, and half a century later, when Uzbeg Khān (who was the chief of the Golden Horde from 1313 to 1340) attempted to convert the Mongols who still stood aloof from Islām, they objected, 'Why should we abandon the religion of Jenghīz Khan for that of the Arabs?' "[110] They had a point, in the sense that the religion of Chengiz Khan was some form of Buddhism, a missionary religion like Islam and one perhaps requires good reasons to switch from one missionary religion to another.

The Mongol invasions had consequences for the gaining of converts by Islam in China, India and even Indonesia. The effect was direct in the case of China, as "the extension of Mongol rule over China gave an impulse to the spread of Islam in that country; though Muslim merchants had been found in the coast towns from a much earlier period, the firm establishment of the faith in China dates from the thirteenth century."[111] The effect was more direct in the case of India. In this case "the terror of Mongol arms caused a number of learned men and members of religious orders to take refuge in India, where they succeeded in making many converts."[112]

S.M. Ikram notes, for instance, that "the consolidation of Muslim rule [over northern India] owed not a little to another event which was a tragedy for the Muslim countries of central and western Asia. This was the Mongol invasion, which drove large number of refugees, among whom were princes, chiefs, soldiers, scholars, saints, to Muslim India. Thus a vast reservoir of manpower became available to the new government of Delhi, and those people, having suffered so much, did not spare themselves in making India a citadel of Islam."[113] Islam first spread to Malay and Indonesia during this period of the Mongol invasions, although this expansion is not connected with the event. One state changed its religion to Islam because its Hindu ruler, Parameśvara, wanted to marry a Muslim princess and changed his religion and that of his subjects in order to do so.

Muslim missionary activity continued the fifteenth to the eighteenth century. India was the scene of vigorous missionary activity not only during this period but also earlier. "In 1236 there died in Ajmer one of the greatest saints of India, Khwājah Mu'īn al-Dīn Chistī, who settled in the city while it was still under Hindu rule and made a large number of converts,"[114] although on one occasion another saint Shaikh Nizam-ud Din Auliya "observed, reportedly with tears in his eyes, that 'the heart of these people (Hindus) is not changed through one's sermons. However, if some of them are persuaded to join the company of some pious men, they may become Muslims.' "[115] Conversions of Christians to Islam also occurred during the medieval period. Thus "the Turkish conquest in Europe in the fourteenth and fifteenth centuries were followed by conversions to Islam on a large scale and in the seventeenth century thousands of Christians in Turkey in Europe went over to the religion of their rulers. . . . But there is little evidence of any direct propagandist efforts on the part of the Muslims."[116]

The rise of the Wahhābī movement in the nineteenth century was a significant development.

> In India the Wahhābī preachers aimed primarily at purging out the many Hindu practices that caused the Muslims to deviate from the ways of strict orthodoxy, but incidentally they carried on a propaganda among unbelievers, and their example was followed by other Muhammadan missionaries, whose preaching attracted to Islām large numbers of converts throughout the country. In Sumatra Wahhābī reformers stirred up a revival and made proselytes. But a more momentous awakening was felt in Africa. 'Uthmān Danfodio returned from the pilgrimage to Mecca full of zeal for the Wahhābī reformation, and under his leadership his people, the Fulbe, who had hitherto consisted of small scattered clans living as shepherds, rose to be the dominant power in Hausaland; the methods of the Fulbe were violent and political, and they endeavoured to force the acceptance of Islām upon the pagan tribes which they conquered. On the other hand, a peaceful propaganda was carried on in the Sūdān by members of the Amīrghaniyyah and Qādiriyyah orders; the former takes its name from Muhammad 'Uthmān al-Amīr Ghanī, whose preaching won a large number of converts from among the pagan tribes about Kordofan and Sennaar; after his death in 1853 the order that he founded carried on his missionary work.[117]

It is only in modern times that one witnesses the emergence of missionary societies in Islam. They "were unknown in the Muslim world before the last decades of the nineteenth century and such missionary societies as are now found in Egypt

and India appear to have owed their origin to a conscious imitation of similar organizations in the Christian world."[118]

This survey of the Islamic attitude to conversion produces some striking results in a comparative context, which are best highlighted by contrasting them with the Christian situation. Missionary activity in Christianity, though often distinguished by individual initiative, possesses a marked corporate character on account of the Church as an agency intermediate between the individual and the state, which is largely absent in Islam. The quest for converts in Islam is thus most pronounced at the *individual* level or at the level of the *state*. How pronounced it is at the individual level can be seen from the following examples:

> Even the prisoner will on occasion take the opportunity of preaching his faith to his captors or to his fellow-prisoners. The first introduction of Islām into Eastern Europe was the work of a Muslim jurisconsult who was taken prisoner, probably in one of the wars between the Byzantine empire and its Muhammadan neighbours, and was brought to the country of the Pechenegs (between the lower Danube and the Don) in the beginning of the eleventh century; before the end of the century the whole nation had become Muhammadan. In India, in the seventeenth century, a theologian, named Shaikh Aḥmad Mujaddid, who had been unjustly imprisoned, is said to have converted several hundred idolaters whom he found in the prison. Women as well as men are found working for the spread of their faith; the influence of Muhammadan wives made itself felt in the slow work of converting the pagan Mongols, and in Abyssinia in the first half of the 19th century. the Muhammadan women, especially the wives of Christian princes, who had to pretend a conversion to Christianity on the occasion of their marriage, brought up their children in the tenets of Islām and used every means to spread their faith. In the present day the Tatar women of Kazan are said to be zealous propagandists of Islām.[119]

Similarly, it is the *individual* trader who has been an active agent in the spread of Islam.[120]

At the level of the state, however, the process becomes a relatively impersonal one, as it is often in the interest of the individual to convert to Islam in an Islamic state. Scholars have drawn attention to the paucity of missiological literature in Islam[121] but perhaps it is compensated for by the accounts of military and political conquests of Islam. This may explain why "throughout the course of Muhammadan history Islām has at times received large accessions of converts for various reasons—political and social—wholly unconnected with missionary enterprise; at the same time it has always retained its primitive character as a missionary religion, without, however, having any permanent organization to serve as a medium of its expression."[122]

These considerations make the point that Islam may have no separate designation for a missionary a particularly intriguing and illuminating one. T.W. Arnold offers the following explanation:

> The most characteristic expression of the missionary spirit of Islām is, however, found in the proselytizing zeal of the individual believer, who is prompted by his personal devotion to his faith to endeavour to win the allegiance to it of others. Though there have been religious teachers who may be looked upon as professional missionaries of Islām, especially the members of the religious orders, it is the trader who fills the largest place in the annals of Muslim propaganda; but no profession or occupation unfits the believer for the office of preacher of the faith, nor is any priestly ministrant needed to receive the convert into

> the body of the faithful. Some observers, entitled to respect for their knowledge of the Muhammadan world, have gone so far as to say that every Muslim is a missionary:
>
> "À tout musulman, quelque mondain qu'il soit, le prosélytisme semble être en quelque sorte inné" (Snouck Hurgronje, *RHR* lvii. [1908] 66). "The Muslim is by nature a missionary. . .and carries on a propaganda on his own responsibility and at his own cost" (W. Munzinger, *Petermann's Mittheilungen*, 1867, p. 411).

However exaggerated such an opinion may be, stated thus as a universal, it is certainly true that there is no section of Muslim society that stands aloof from active missionary work, and few truly devout Muslims, living in daily contact with unbelievers, neglect the precept of their Prophet:

> Summon thou to the way of thy Lord with wisdom and with kindly warning (Qur'ān, xvi.126).[123]

II

The issue of conversion has gained a sharper edge over the past few decades, which have brought the issue of proselytization to the fore. A major project was undertaken by the Center for the Study of Religion and Law at Emory University, at the initiative of John Witte, Jr., known as "The Problem and Promise of Proselytism in the New Democratic World Order (1995–2000),"[124] resulting in four volumes.[125] Globalization has been proceeding rapidly since then and scholars foresee that "the twenty-first century could be an age of unprecedented proselytism."[126] Before we proceed further, however, to examine the implications of these developments for religious freedom and its problematization, some terminological clarifications may be in order, involving the terms *conversion*, *proselytism*, and *proselytization*, which are often used interchangeably but which might be usefully distinguished in certain contexts. Conversion is of course used to describe the change of religious allegiance on the part of individuals and groups, and the word may denote not only interreligious but intrareligious conversion as well. Thus most would agree, for instance, that "movements within different denominations of Christianity—e.g. from Catholicism to Protestantism—are religious conversions."[127] As compared to proselytism, which "is seen more and more as infringement upon the rights to private life and religious identity,"[128] the term conversion is more neutral. As compared to proselytization, conversion refers to the end-result as distinguished from the process which brings it about. Additionally, conversion is also at times used in a very personal and individualistic sense, as when people have a "conversion experience". The word proselytism, as indicated earlier, "tends to be associated today with the alleged dark side of missionary work—even when missions in themselves are not considered undesirable,"[129] and "also comes under attack from people who associate proselytizers with people infringing upon individual freedom."[130] Although people might oppose proselytization, that word "lends itself to a less negative reading than 'proselytism' (often interpreted as unethical, coercive, or fraudulent),"[131] with its focus "on the *process* rather than the *product*, the *means* more than the

end."[132] This focus is important because it soon becomes apparent that "the possible religious conversion (an event of personal, spiritual transformation) was often less important for generating conflict than the *forms* of *expression, transmission, and behaviour* deployed to this end."[133]

Conversion has already been discussed. One may therefore proceed to a discussion of *proselytism* and *proselytization*.

III

Jean-François Mayer has examined the issue of proselytism in some detail[134] and he points out that the issue is not confined to non-Western countries, for in Western countries the various cults are accused of engaging in it.[135] Nor is it an issue confined to believers, for the ban on Islamic scarves was introduced in France on the ground that "because the State is the protector of the freedom of conscience, it has a duty to intervene when *proselytism*, a withdrawl into a community, or a refusal to recognize the equality of the sexes threaten that fundamental liberty,"[136] in the words of French Prime Minister, Jean-Pierre Rafarin.

Mayer presents six theses concerning proselytism on the basis of his research for consideration.

1. Conflicts over missionary activities are likely to increase, due to the current forces of globalization. In the long term, however, missionary activities might also lead to an increased acceptance of pluralism.[137]

Mayer found it remarkable, during his visit to Dushanbe in Tajiskistan, that in "the same place in Central Asia, one can find Muslim and Christian missionaries, Tajiks, Russians, Turks and Koreans competing."[138] His experience in India earlier on had suggested that competition could lead to conflict:

> In 1999, in South India, I even had the unexpected experience of being mistaken for a missionary by a group of Hindu activists who surrounded me and threatened me: "We don't like missionaries here!" It took a long discussion to calm them down. Such events taught me further about the resentment which missionary activities can generate.[139]

But he also notes that more than 50% of Muslims living in Switzerland considered it " 'perfectly acceptable' for a Muslim to leave Islam in order to join another religion," when surveyed in 2004.[140]

2. Proselytism can reinforce images of a clash of civilizations.[141]

Mayer warns that "one should not underestimate the impact of victorious reports and missionary plans written in the style of a planned military offensive and sent back to headquarters by enthusiastic missionaries anxious to improve fund-raising."[142] He also notes that "one of the two original goals of the Muslim Brotherhood, when it was founded in Egypt in 1928, was to counteract Christian missionary propaganda."[143] Similarly, while "Christian-Muslim co-existence had long been peaceful in Tanzania," this may no longer be the case on account of

"outside factors and groups"[144] involved with Christian evangelization and Islamic revivalism.

3. Proselytism is not just seen as a way of spreading religious ideas: it if often perceived as an attempt to extend ideological influence and political dominance.[145]

Mayer notes that the government has reacted harshly in Vietnam "against the evangelical movement among Hmong tribals, because it is afraid that the United States, after being unable to defeat the Vietnamese militarily, is now attempting to reach the same goal through alternative, somewhat in more peaceful ways."[146] In France, the French monthly *Le Monde Diptomatique* carried an article in its May 2001 issue entitled: "Cults: Trojan Horse of the United States in Europe".[147]

4. Where there are conflicts over proselytism, missionary activities are often understood or presented as a threat not so much to religion as to national interests.[148]

Dr. Mete Gundogan, the leader of a small party in Turkey, articulated this thesis with great clarity in 2004:

> I thought you would be bewildered why we are against missionaries in this country. We are against missionaries because missionaries are used by modern imperialists for their capital or industrial exploitation. So nobody can come to this country as an agent of an imperialistic or capitalistic ideas. This is considered as double agenda. All over the world, nobody likes people who have double agenda [sic]. So missionaries are seen in this country as the people who have double agenda [sic]. Practicing their religious beliefs is quite welcome and quite normal.
>
> Islam is a strong religion in this land or this region ... We do not hold inside antagonism against Christianity, we are not antagonists. But if a bunch of people comes to us as something on behalf of some other circles, this is not liked. Missionaries in Turkey are not a threat to our religion. Missionaries in Turkey are a threat to the unity of the Turkish Republic and to Turkish Republic's industrial and economic sovereignties, because they have a double agenda.[149]

Similar sentiments have also been expressed in India, as when Sita Ram Goel writes:

> Hindu society has to understand very clearly that what it is faced with in the form of Christianity and Islam is not religions but imperialist ideologies whose appetite has been whetted by conquest of a large part of the world ... There is little chance that Hindu society will ever be able to contain Christianity and Islam if Hindus continue to regard these imperialist ideologies as religions.[150]

5. Groups and people critical of proselytism tend to distinguish the issue from religious freedom, which they usually profess to accept in principle.[151]

This is a very significant point, as in principle few oppose religious freedom as such, but do not see freedom to proselytize and freedom to worship as complementary.[152] The Kokkinakis case is particularly interesting in this respect. Minos Kokkinakis was a Greek who became a Jehovah's Witness and began to proselytize, which is a criminal offense under Greek law, and was repeatedly imprisoned. The European Court of Human Rights, however, overturned Greece's ruling on May

25, 1993, concluding that "the human right to practice or manifest one's religion must encompass the freedom to try to convince one's neighbour of its validity".[153] It is worth noting, however, that

> Human rights can sometimes turn into an argument against proselytism. Article 13 of the Greek Constitution of 1975 expressly forbids proselytism, but the same article states also that any "known religion" can be freely practiced. Greek laws do not forbid conversions—otherwise Greece could not be a member of the European Union, but undue influence in attempting to convince a person to change his or her religion. Interestingly, the European Court of Human Rights has never condemned the constitutional principle banning proselytism in itself, although some judges have been of the opinion that it represents a limitation of religious freedom de facto.[154]
>
> 6. Conflicts over proselytism foster change and encourage the creation of new strategies and organizations among religious groups targeted by missionaries.[155]

Such a strategy is often mimetic rather than creative, and one such strategy is very significant in terms of the present discussion, namely, that proselytism might lead "some non-proselytizing religion to proselytize."[156] The *Śuddhi* movement, initiated by Dayanada Sarasvati (1824–1883), is often cited to illustrate this point. The word literally means "purification" and stood for a ritual by which those Hindus who had become "defiled" by becoming a member of other religions—specially Islam and Christianity, were welcomed back into the fold.[157] It is also worth noting here that a "key issue which led to the founding of the VHP [Vishwa Hindu Parishad or World Hindu Assembly] in 1964 was the International Eucharistic Congress in Bombay the same year, with the announcement that it would be marked by the conversion to Christianity of 250 Hindus."[158]

When these six theses are examined, it becomes clear that religious freedom, as it is currently understood in human rights discourse, can often become a source of religious conflict (at least in the short run; Mayer is more optimistic over the long haul), although the concept was developed as a solution for it. There could be many factors involved in this paradoxical outcome but one is surely the fact that the concept, as it used today, seems to cover only one perspective on it, namely the Western. The discussion also generates the possibility that if a Western solution is imposed on a society which does not possess the Western problem to begin with, then this very imposition of the solution might itself create the very problem for which it is meant to be a solution. This problematizes the issue of religious freedom in a very significant way, in the suggestion that if one administers a treatment, in the absence of the disease, the treatment might itself cause the disease, thereby justifying the treatment in a truly vicious circle.

An interesting point, however, emerges in relation to thesis number (5), that even those who are critical of proselytism accept religious freedom in principle. This thesis seems to imply the distinction drawn elsewhere in this book between two senses of "conversion": (1) *my* right to change my religion and (2) *someone else's* right to ask me to change my religion. The Western mind, on account of its concept of religion as involving exclusive religoius affiliation, conflates the two but once one stops trading on this ambiguity, it becomes clear that followers of both proselytizing and non-proselytizing religions tend to accept the first part of the right, which pertains

to *my* right to change my religion without demur, but differ in their views on the right, and the extent of the right if conceded, of *someone else* asking me to change *my* religion.

IV

But why would, or should, someone object to being asked to change one's religion? Or, in other words, what are the objections to proselytism? There could be two ways of approaching: (1) identifying the objections in general and (2) identifying the objections which the non-proselytizing have in particular against the proselytizing religions. It is useful to treat objections to proselytism under these two heads, although some overlap is inevitable. The general objections are discussed here, the specific objection by non-proselytizing are dealt with in a later chapter.

The first kind of objections have been analyzed in detail by Grace Y. Kao,[159] who is herself a Christian and who remains "grateful for the past proselytizing work of others—British Presbyterian medical missionaries to Taiwan, to be exact—who were of great service to my great-grandparents and the extended family,"[160] but who is also "troubled by some of the social, ethical, and theological problems that proselytism raises."[161]

Kao identifies "five distinct arguments against proselytism"[162] and assesses their strengths and limitations. These she labels types of anti-proselytism arguments in general and identifies them individually in terms of (1) appropriate targets and tactics, (2) substitution, (3) non-recruitment, (4) group protection and (5) anti-imperialism.

Appropriate Targets and Tactics

This category has to do with missionaries "targeting particularly vulnerable populations for conversion or their offering of material inducements to bring about the same."[163] Thus, for instance, the "Cairo Declaration of Human Rights in Islam (5 August 1990) suggests that the impoverished and ignorant should be immune from the proselytizing reach of others."[164] The imbalance of the two parties in terms of power or wealth obviously invites criticism but

> The criticism becomes even more acute when proselytizers require participation in a religious ritual or activity as a prerequisite for aid, as when an indigent population is forced to sit through a lengthy sermon or worship service before receiving much needed food, shelter, or medicine. Indeed, as the term "rice Christian" implies, many early modern converts to Christianity among African, Asian and South American indigenous populations accepted baptism, together with European-style schooling and instruction in the languages of their colonizers (*e.g.*, Dutch, English, French), primarily to gain access to the fruits of modern technology or upward social mobility.[165]

Apart from conversion being required as a pre-conditoin for material or medical help, even their mere "*conjoining* of and with missionary reach"[166] would be

considered questionable by some. In this respect, the experience of missionary relief efforts after the 2004 Indian Ocean tsunami is instructive, for

> the relief efforts in the aftermath of the 2004 Indian Ocean tsunami not only disclose already controversial cases where humanitarianism was *coupled* with proselytism, but also even morally dubious situations where aid was *coterminous* with and virtually *indistinguishable* from religious instruction. It is no wonder, then, why non-proselytizing relief agencies and critics ... view the combining of preaching with aid with grave misgiving and even contempt.[167]

On the other stand, missionaries have often criticised efforts to bar them from poor or disease-stricken areas as a kind of the dog-in-the-manger policy, with the host societies often doing nothing or precious little to help the people and at the same time preventing missionaries from doing so.

Substitution

The underlying idea here is to substitute one target for another, as when Christian missionaries, formerly seeking intrareligious conversion from one Christian denomination to another, band together to focus only on interreligious conversion. Kao notes that

> the major limitation of this anti-proselytization of substitution is its use of a double-standard, wherein the desire to change the institutional affiliation or denominational loyalty of other *Christians* is to be condemned as deplorable proselytism, while the intent to bring *non-Christians* into any given Christian fold is to be promoted as acceptable evangelism, witness or invitation.[168]

Kao also notes the response to this from the side of the Christian missionaries, for

> while some Christians would criticize this double-standard as a betrayal of inclusivist theology, others would retort that the inclusivist view that God has many children beyond the visible boundaries of the church neither abrogates, nor even tempers the duty of Christians to continue to proclaim the faith to outsiders.[169]

Non-recruitment

The idea here is to relinquish "any and all desires to change the religious commitments of those who are not already fellow practitioners."[170] The religious missionary, when confronted with this position, may respond by arguing that this is just a way of giving a dog a bad name and hanging him because there is no such anti-proselytization sentiment associated with secular advocacy, and further that perhaps one need not stop recruitment in the case of those religions who

> are either able to fuse the "old" with the "new," or convert in an "additive" fashion by assimilating, subordinating, and re-interpreting old beliefs, the authority of previous scriptures, and prior ritual practices *instead of discarding them entirely*.[171]

The Jews provide an interesting example in this context in two ways. Judaism itself is generally seen as not seeking converts and so obviously exemplifies the case of non-recruitment. Kao recognizes this point,[172] but also develops a second one in the context of promoting strategies to curb proselytism. She writes:

> It is here where the example of Judaism becomes instructive once again for illustrating how effective anti-proselytization can be when argued from the "inside" of any given religious tradition. This is to say that the logic of anti-proselytization might be better served if it directly responded to and accordingly interrogated the logic of proselytization itself. For example, if Christian evangelism towards Jews is largely premised upon supercessionism and replacement theology (*i.e.*, the view that the Church has become the sole authentic continuation of Israel after Christ's sacrifice and now possesses what was once Israel's inheritance of blessings and covenantal promises), it is more than likely that only alternative theologies involving God's eternal election of Israel could successfully counter them. Of course, such counter-theologies will not convince all proselytizing Christians, but they will most likely have a greater chance of undercutting the reasons that drive evangelism toward Jews in the first place. This manner of engaging the logic of proselytism on its own terms has the additional benefit of showing respect for those who would proselytize, thereby drawing them into genuine dialogue with others who have been critical of their activities.[173]

There is however also a third way in which Judaism provides a salutary example here. At one time, indeed for centuries, Christianity targeted the Jews for conversion but has now changed its attitude and views Judaism too close to it for proselytization to the directed against it.[174] This raises the hope that all religions may some day abandon preselytization, if they begin feeling close enough to each other.

One way of developing this point further might be to apply the doctrine of double-effect to this situation, which distinguishes between intended and foreseen consequences. A popular example given to illustrate the doctrine refers to the case of a member of a recruitment committee, whose negative vote means that a particular candidate will not get a job, and is bound to feel rejected. The committee-member however did not *intend* to hurt the candidate, though the fact of the hurt can be clearly *foreseen*. If the committee-member intended the result, then the member was acting dishonestly. The examples Kao gives of non-recruitment seem to involve not engaging in outreach among other religions at all, but this distinction between *intended* and *foreseen* effect creates the possibility of religions engaging in propagating their doctrines among people beyond their ken without intending to convert them, though this action of theirs might result in a few unintended conversions. If we now combine this with the distinction between religious change being "additive" rather than "transplantative", then one has a new missiology here which might take the sting out of proselytization.

Group Protection

This argument "shifts its concern from the self-determination of individuals to that of entire groups or communities. Its basic assumption is that their collective identity and integrity needs to be safeguarded from the corrosive influence of others—be they proselytizers from afar or dissidents from within."[175] The close association of

Greek Orthodox Church with Greece, of Russian Orthodox Church with Russia, and of Hinduism with India are the three case-studies Kao examines in this context.

Kao finds this argument against proselytization rather weak. She maintains that underlying

> these calls for "group protection" is a logic that combines ethnic essentialism with entitlements justified by ancestral precedence. That is, once some sort of founding myth links ethnic or national identity with either a religious tradition or a political ideology, it is then assumed that Russians or Greeks who have "left" Orthodoxy, Africans who do not practice indigenous religions, Indians who are not Hindu, and Muslims in France who support the veiling of girls and women at all times while in public (or at least would grant them the right to decide the matter for themselves) either have betrayed the essence of what it means to be Russian or Greek and so forth, respectively, or were never fully-fledged members of those groups to begin with. In addition, since religion has been conceptualized as more of a corporate than individual affair in all of these afore-mentioned examples with the exception of the French case, religious diversity within these groups can at most be tolerated, but not celebrated. In fact so great is this desire to encourage adherence to and prevent defections away from the one, dominant religious or political tradition that both incentives and penalties for non-compliance are often placed in a single-direction.[176]

Kao points out that such "group protection" arguments have a way of spawning double-standards. Thus "some Islamic states prohibit proselytism (to Muslims) at the same time as they encourage missionary efforts to convert non-Muslims"[177] and "Hindutva sees no contradiction in accusing Christian missionaries of using fraudulent means", while its adherents "occasionally offer their own financial incentives to prevent such conversions."[178] This is the place where Kao invokes Paul Ricoeur's "Hermeneutics of Suspicion" and points out, through the words of Martha Nussbaum cited below, the potentially xenophobic element in the argument:

> The ideas of Marxism, which originated in the British Library, have influenced conduct in Cuba, China, and Cambodia. The ideas of democracy, which are not original to China, are by now extremely important ideas. The ideas of Christianity, which originated in a dissident sect of Judaism in a small part of Asia Minor, have by now influenced conduct in every region of the globe, as have the ideas of Islam. As Aristotle said,"In general, people seek not the way of their ancestors, but the good."[179]

The argument, however, does possess some force in the case to the American Indians in the U.S.A., which is explored in some detail in a later chapter.

Anti-imperialism

This is the last of the five ideal-types identified by Kao, which

> [D]raws upon the lessons from at least two different historical trajectories: (1) the military and political conquests of the early Islamic empire that facilitated conversions to Islam among the conquered peoples, especially in North Africa, the Middle East, and Persia and (2) both Christendom and modern European missions to parts of Africa, Asia, and the "New World" that combined a platform of socio-political hegemony with the spreading of the "good news" of Jesus Christ.[180]

Imperialism here, understand as implying a nexus between military and religious expansion, continues to be a factor in the rhetoric of anti-proselytization and some of the incidents associated with the American presence in Iraq and Afganistan seem to buttress this view. At the same time, the fact that "South Korea is the world's largest source of Christian missionaries and Brazil is not far behind,"[181] must also be taken into account.

In conclusion, Kao offers the following assessment of the five arguments in terms of "reasonableness and warrantibility."[182] While the the first ("targets and tactics") and fifth ("anti-imperialism") types my "exaggerate their claims",[183] the continuing use of questionable methods for securing converts and the continuing links between military occupation and missionary zeal suggest that opponents of proselytism have "genuine cause to be concerned."[184] The second and third types of anti-proselytism ("substitution" and "non-recruitment") do much to "discredit proselytism, though arguably in a self-serving or otherwise partial manner: the former by denouncing evangelistic outreach only when it is directed at other Christians and the latter censuring attempts at conversion only in its religious, but not secular, forms."[185] The fourth type ("group protection") is a cautionary tale which may reflect a genuine desire to preserve the unity of the group but can degenerate into chauvinism and majoritarianism.

V

It is clear then from the preceding discussion, that there are two main strands in the thinking on religious freedom—one which considers proselytization integral to it, and one which considers proselytization antithetical to it.

Tad Stahnke may be taken as a representative of the first view.[186] According to him "proselytism—whether viewed as an exercise of expression or a manifestation of religious belief—*is not inherently problematic*,"[187] and this is the crucial point. The difficulty rather lies in "finding the proper balance between the freedom to proselytize and the multitude of rights, duties, and interests of religious groups, individuals, and the state that may conflict with that freedom."[188] In fact, Stahnke offers a fairly sophisticated analysis of what factors enable one to distinguish between "proper" and "improper" proselytism, such as (1) the characteristics of the source; (2) the characteristics of the target; (3) where the proselytism takes place and (4) the nature of the exchange between the two, the source and the target.[189] Proselytism itself he defines as "expressive conduct undertaken with the purpose of trying to change the religious beliefs, affiliation, or identity of another."[190] Stahnke's view is sophisticated in the sense that he admits that "there are *no general solutions*" to the issue of proselytism, even as he insists that it is not inherently problematical.

Makau Mutua from Africa represents the opposite point of view. Rosaline I.J. Hackett points out that Mutua asks different questions of the same documents as those used by Stahnke. For instance, according to Mutua, religious freedom is secured in article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), but "it fails

to delineate the duties that should be borne by the proselytizing religions."[191] Moreover, these documents forbid use of force and state resources so "are not missionaries who worked against other religions, with the support of the colonialists, in violation of such provisions?"[192] For Mutua "the most fundamental of all human rights is the self-determination principle which . . . should be expanded from its more political meaning to include cultural survival [and it] should trump other human rights principles of free speech, assembly, and association."[193] Makau Mutua elaborates on this as follows:

> Since the right to freedom of religion or belief includes the right to be left alone—to choose freely whether and what to believe—the rights regime incorrectly assumes a level playing field by requiring that African religions compete in the marketplace of ideas. The rights corpus not only forcibly imposes on African religions the obligation to compete—a task for which as nonproselytizing, noncompetitive creeds they are not historically fashioned—but also protects evangelizing religions in their march towards universalization. In the context of freedom of religion or belief, the priviliging by the rights regime of the competition of ideas over the right against cultural invasion, in a skewed contest, amounts to condoning the dismantling of African religions.[194]

VI

One may conclude this chapter with a dramatically different take on the issue of conversion offered by Sara Claerhout and Jakob De Roover,[195] as a prelude to what will be explored in later chapters in much detail. Much of the foregoing and indeed existing discussion on the issue has been based, explicitly or implicitly, on the following assumption:

> Religious conversion and proselytization are taken to be general problems of plural societies today. The basic structure of these problems seems so self-evident that it is rarely stated explicitly: the encounter between different religions gives rise to competition regarding the gain and loss of adherents. Some of the followers of one religion reject its teachings and accept those of another. This competition in its turn generates tension, conflict and violence between the religious groups in question. Such is the tacit consensus on the nature of the predicament. The common solution is as clear: the principle of freedom of religion should be respected in all societies. Each citizen has the right to choose freely between religions and a liberal neutral state ought to safeguard this freedom.[196]

Claerhout and De Roover however argue that this "consensus is mistaken,"[197] on the following grounds: (1) that "it is impossible to speak of one problem and process of religious conversion as though it were shared by various religions and societies,"[198] (2) religious conversion is believed to be "omnipresent, because of three underlying assumptions"[199] and (3) the examination of Indian evidence on this point would demonstrate that "religious conversion is a predicament which exists predominantly in Christianity and Islam,"[200] which "disappears" once "one travels beyond the worlds of these religions."[201]

Thus the first ground on which Claerhout and De Roover oppose what they call the consensus, is that the concept of religious conversion is discrepant. To establish this point they examine whether "the narrow concept of conversion, based

on the Christian religion,"[202] can be extended to other forms of conversion, only to discover that scholar after scholar runs into difficulties when trying to do so. Anthropologists Andrew Buckser and Stephen D. Glazier articulate the following misgivings:

> Cross-cultural analyses of conversion inevitably encounter difficulties when they try to define their subject. Academic models of conversion tend to draw heavily on Christian imagery, particularly on such dramatic scenes as Paul's vision on the road to Damascus. These images construct conversion as a radical, sudden change of belief, one in which old ways and associations are left behind as a result of a new theological outlook. How can such models encompass non-Christian religions, which often regard belief as less important than religious practice? How can they accommodate the slow and partial stages through which conversion often takes place? Even more difficult, how can they accurately describe cultures for which belief, practice and membership have profoundly different meanings than they do in Western society?[203]

Two other scholars, Rowena Robinson and Satthianathan Clarke, are thus compelled to state that their work "invokes the idea of conversion as a terrain of multiple and diverse possibilities, rather than restricting it to the assumed rigidity of Islamic or Christian conversion."[204] They claim to bring together "on the same ground multiple contexts—ancient Jain and Buddhist conversions, conversion to varied varieties of Islam or Christianity or even Sikhism at different points of time and through different modes and motivations as well as tribal conversions and transformations of sect and caste,"[205] while insisting that this does "not amount to a yoking of a series of incompatibles."

This procedure doubtless imparts many meanings to religious conversion, but Robinson and Clarke see this as a positive:

> Our understanding of the processes of conversion should be broad enough to capture ... variations across time and complexities across denomination and region. There does not seem to be a good enough reason to abandon the term conversion, for there are few others to replace it without difficulty ... It appears much more exciting and relevant to speak of a range of situations and meanings that are a part of the field of conversion, with "conversion" requiring a proper initiation ritual, exclusive adherence to a set of dogmas and abandonment of all other beliefs and practices being only one possibility and, perhaps, lying at one extreme.[206]

For Claerhout and De Hoover this is a call for confusion. They raise three objection to such a move. First of all, Claerhout and De Hoover point out that the question is not whether our understanding is "broad enough," the "question [is] whether a general process of conversion actually exists across the various cultural and religious traditions of India."[207] As a second point they urge that the authors "confuse the use of a term ("conversion") with the understanding of a process (conversion)."[208] And finally they think "this problem cannot be resolved by talking about 'a field of conversion', containing 'a range of situations and meanings' unless it is clear *which* range of situations exemplifies religious conversion. One pole may be exclusive adherence to a particular set of dogmas and abandonment of all others, but what does the other pole consist of and what lies in between?"[209]

Saurabh Dube and Ishita Banerjee Dube have also written on conversion in India.[210] They also feel that the concept of conversion is "too constrained a

concept"[211] and to them the "transformations of caste and sect" in India indicate "the importance of understanding conversion less as an unremitting rupture and more as the fashioning of novel practices, beliefs, identities, visions, and boundaries of discrete religiosities—often vernacularly, distinctly Indian."[212] Claerhout and De Roover however think that while one could extend the semantic range of the word conversion to include them "this does not increase our understanding. On the other hand, the obscurity of the term—religious conversion—has increased ... the nature of the cultural processes of change continues to escape us, because we classify them as conversions."[213]

This is an important point for Claerhout and De Roover. When David Hardiman proposes that though one does not "talk of any 'conversion' to 'Hinduism',"[214] yet systems of belief and practice "frequently competed with each other to attract followers,"[215] Claerhout and De Roover point out that "the philosophical schools in ancient Greece and Rome were equally involved in a competition to attract followers. Yet, no one thinks of studying these cases of competition as religious conversion."[216] And when secularists argue the Hindus fear conversion because that involves losing political weightage, then how "is the problem different from the contest between political parties in any democracy, trying to gain voters or to prevent losing them? Such a contest may also involve threats to one ideology by another. It often concerns parties with some religious affiliation, which try to win votes. It is a contest for political power. As a consequence, certain communities will fear a decline of their grasp on society."[217] Similarly, in the case of the conversion of former untouchables in India, now called Dalits, if their conversion is a "conversion to equality,"[218] and the "main issue in these shifts is the rejection of an inegalitarian ideology in favour of a message of social equality,"[219] then "how does this become an issue of religious conversion. It appears to stand closer to the decision of a European labourer to join the socialist party ... than to John Henry Newman's conversion to Catholicism."[220] A series of assumptions seem to be involved here. The first assumption pertains to what makes religious conversion "the common problem we confront in the encounter."[221] Claerhout and De Roover raise a key question here and ask: why should, say, the "movement of a Christian into Hinduism" be taken as a case of religious conversion?

> Why is this not the same kind of event as a scientist rejecting one theory to accept another? After all, the person in question also seems to reject a particular set of propositions (e.g. that a righteous soul will obtain eternal life in heaven through God's grace) and accept another (e.g. that of the transmigration of souls). Why should a Christian becoming Hindu not be described as a radical change of dietary habits instead of conversion? The change often involves a shift towards a vegetarian diet. Or why is it not equivalent to swap of one's favorite pop star or actor—the pictures being replaced and the reverence being redirected? The obvious answer to such questions (which makes the questions seem absurd) lies in the presumed fact that Hinduism and Christianity are a phenomena of the same kind: they are both *religions*. Therefore, a movement from one to the other is religious conversion.[222]

What seems called for is an open acknowledgment of the fact that central to the question of conversion is the rivalry of religions. Moshe Hirsch states this point with the required force:

> Conversion is a dynamic dimension in the life of every religion. Through this process religions acquire new believers and lose existing ones. It is generally safe to assume that every religion is interested in increasing the number of its adherents and avoiding as much as possible the conversions of its believers to other religions. The predominant motivation behind these complementary aims is the metaphysical moral conception of contemporary world religions, which generates the desire to bring about universal acceptance and application of the particular religious vision which one holds to be universally true . . . The basic setting in which the process of conversion takes place has strong features of a zero-sum game, in which anything that one player wins the other loses. In inter-religoius conversions, every new convert to a particular religion is also an apostate from the other religion. The preferences of the two religions are thus opposed, and they are considered rivals.[223]

Claerhout and De Roover, on such grounds, point to the difficulty in applying the concept of conversion across religions and cultures. They note, with Louis Feneth, that the concept is "also a product of modernity"[224] but remain convinced that when one tries to extend the concept, "The difficulty is profound: the current model of religious conversion is limited to a Western and Christian understanding. At most, it can include Islamic, but other instances are excluded."[225]

Claerhout and De Roover trace these difficulties to three underlying assumptions, which, according to them, sustain "the contemporary understanding of conversion as a world problem."[226]

> The first assumption is that a variety of cultural traditions must be understood as religions . . .[227]

> The second assumption is that these different religions are rivals . . .[228]

> The third assumption concerns the origin of this rivalry: different religions are rivals therefore truth predicates apply to them.[229]

Claerhout and De Roover introduce a fresh consideration when they argue that religions become rivals when truth predicates are applied to them. As they go on to explain:

> That is, competition exists between the teachings, doctrines or belief systems of religions, because they make *rival truth claims*. Could *orthopraxy* not cause rivalry between religions in the same way as orthodoxy? Generally, this has not been the case. In so far as religious conflicts seemed to revolve around practices, this happened because these were seen as the embodiments of incompatible doctrines. One need think only of the clashes between Catholics, Lutherans and Calvinists about the liturgy of the mass, the *fractio panis* and the relation to the doctrine of transubstantiation. Where it is not based in orthodoxy, *orthopraxy* is directed only at those who belong to a particular tradition. The strictness of ritual might generate temporary conflicts within traditions, but it does not transform different religions into rivals. Truth claims do so. An illustration is found in the account about the conversion of *Dalits* from Hinduism to Buddhism or Christianity. The *Dalits* are taken to reject the Hindu doctrine of the caste system and its four *varṇas* in favor of Buddhism's or Christianity's message of human equality. These are viewed as competing religious doctrines about the nature of humanity; hence the possibility to convert from one to the other.[230]

Claerhout and De Roover had sought to challenge the regnant consensus on three grounds; first on the ground that religious conversion was not an unambiguous phenomenon as understood currently, and secondly on the ground that its alleged

omnipresence was based on three assumptions. The next ground on which they challenge the present consensus is the evidence, or better still, counter-evidence from India. They in fact offer what may be called three counter assumptions in relation to the previous ones.

In order to understand the first of the new set of assumptions, it would be helpful to remember that "the universality of religion has always been an unquestionable truth to the religions of the Book. They share an account of the history of humanity which incorporates all other human traditions and make them into false religions,"[231] a statement particularly true of Christianity and Islam. Nor does the story end here for, as S.N. Balagangadhara has argued in his book: *The Heathen in His Blindness*, modern secular tradition has inherited this assumption in the form of a belief in the cultural universality of religion. As Claerhout and De Roover explain:

> [T]his belief in the cultural universality of religion still precedes all theory formation and empirical research on religion. That is, neither empirical nor theoretical grounds have been given for the universality of religion. The problem was never even addressed. This could happen, because Christian theology has remained the underlying framework of the contemporary study of culture and religion. Its theological truths have become the "facts" of the western common sense and the scholarly consensus. Among these is the cultural universality of religion.[232]

If we persist in this belief then we run into the following situation: the "notorious difficulty in the study of religion... to show how both the Hindu, Buddhist, Jain and other Asian, African and Ancient Greek and Roman traditions on the one hand, and Christianity, Judaism and Islam on the other, could possibly be variants of the same kind of phenomenon, namely, religion."[233] Now we are ready for the first new assumption based on the Indian example: "The contemporary literature offers reasonable grounds to suspect that the Hindu, Jain and Buddhist traditions and the religion of Christianity and Islam are *phenomena of different kinds*."[234]

In order to understand the second of the new assumptions it would be helpful to recall that "Islam and Christianity are each other's rivals in the restoration of divine truth, while the Hindu, Buddhist and Jain traditions represent idolatry or false religion. Consequently, it is clear that different traditions confront each other as rival religions in India,"[235] —but while it is clear that Islam and Christianity confront each other as rivals, and confront Hinduism, Buddhism, and Jainism as their rivals, it is not at all clear that *these* religions confront Islam and Christianity as rivals. The experience of Bartholomeus Ziegenbalg in the eighteenth century among the Malabarian Brahmins is pertinent here.

> These Brahmins maintained that "every one may be saved by his own Religion, if he does what is Good, and shuns Evil." Today, the Hindu view still obtains that different human traditions co-exist without competing as rivals. Even those most critical of Christianity agree on this: We have three thousand rishis in Hinduism and we feel that Jesus would merit being added to that revered galaxy. We do not hate Christ or Christians. We leave them alone. We respect Jesus as the founder of a great religion. We wish all religions well."[236]

Hence the second new assumption: the religious traditions of India "do *not* see the cultural diversity as a rivalry of religions."

In order to understand the third new assumption it will again be helpful to recall that "In the view of Christianity and Islam, religions are competitors because they revolve around doctrines, which can be either true or false. Since such truth predicates apply to them, they are engaged in a perpetual competition over religious truth. Christianity and Islam claim that—because they are the unique revelations of the biblical God to humankind—they are true."[237] By contrast, the Hindu, Buddhist and Jain perspectives often look upon "religion" as a search for truth, so that the "various traditions are part of a human search for truth and the different practices are paths in this ongoing quest."[238] This is the third new assumption: that "truth predicates do *not* apply to them."[239] The Hindu perspective on the Semitic religions is quotably presented by R.C. Zaehner:

> Hindus sometimes pride themselves, with some truth, that their religion is free from dogmatic assumptions, and that, this being so, their record in the matter of religious persecution is relatively clear. They do not think of religious truth in dogmatic terms: dogmas cannot be eternal but only the transitory, distorting, and distorted images of a truth that transcends not only them but all verbal definition. For the passion for dogmatic certainty that has racked the religions of Semitic origin from Judaism itself, through Christianity and Islam, to the Marxism of our day, they feel nothing but shocked incomprehension.[240]

If we now put these *two sets of three assumptions* side by side then:

> The significance of the three assumptions becomes clear when we realize they are mutually exclusive: either one looks at the diversity of the Indian society (or of humanity in general) as a rivalry of religions or one sees it as a co-existence of traditions. In each of the assumptions, one side is the logical negation of the other: (1) The Hindu traditions and Islam and Christianity are phenomena of the same kind, or they are not. (2) As such, they are religious rivals, or they are not. (3) As rivals, they compete with each other regarding truth or falsity, or they do not. They can do so because *some* religion is false, but they never could if no religion is false. In each case, the positive statement corresponds to the Christian and Islamic theological view of the cultural diversity of humanity. It also coincides with the three assumptions shaping today's view of religious conversion as a universal problem. The negations fall together with the view of the Hindu, Jain and Buddhist traditions. The conclusion is inevitable: conversion becomes a vital problem of religious diversity, *if and only if one looks at the world the way Christianity and Islam do*. In other words, the problem of religious conversion exists only within the experiential world of these religions.[241]

Now what has all this to do with the theme of this book—namely, problematizing religious freedom? Just this, that "the conflict between two views of religious diversity gives rise to a clash over the principle of religious freedom."[242] I cite Claerhout and De Roover at some length for at this the point their analysis intersects with the theme of the book. According to them:

> These two viewpoints generate different interpretations of the freedom of religion. For Christians, Muslims and secularists in India, the principle revolves around the freedom to convert and proselytize. For Hindus, Buddhists and Jains, it revolves around freedom from the intrusion of proselytization. There is no neutral position between these two interpretations of religious freedom. Either one accepts that some religions are false or one believes that no religion is false. One cannot have both, since these are contradictory propositions. In the same way, there is no neutral ground between the claim that religion revolves around doctrinal truth or that is does not. Since the interpretations of religious freedom derive from these contradictory propositions, they are also mutually exclusive. Therefore, with regards

to the problem of proselytization, it seems logically impossible to interpret the principle of religious freedom in a way that is neutral between religions like Islam and Christianity and the traditions of Hindus, Buddhists and Jains.[243]

Nor is this all. As has been argued repeatedly in this book:

The dominant principle of religious freedom, then, must necessarily favor one of the two sides of the Indian equation. It does. The liberal principle of religious freedom, as enshrined in the Universal Declaration of Human Rights and in the Indian Constitution, privileges Christianity and Islam, because it involves the freedom to propagate or manifest one's religion and to proselytize. It implicitly endorses the assumption that religion revolves around doctrines and truth claims. Therefore, each citizen ought always to be free to decide about the truth or falsity of religion and one should also be free to persuade followers of other religions of the unique truth of one's own. This is not a scientific or neutral claim about the nature of religion, but a proposition from the theologies of Christianity and Islam.[244]

Notes

1. Glendon (2001, p. 10).
2. Ibid., pp. 69–70.
3. Radhakrishnan (1993 [1927], pp. 28–29).
4. Nadkarni (2006, pp. 156–57).
5. Gandhi (1958, pp. 230–32).
6. Ibid., p. 232.
7. Ibid., p. 230.
8. Mahadevan (1971, pp. 294–95).
9. Cited, Smith (1963, pp. 173–74).
10. Citied, ibid., p. 174, note 32.
11. Nadkarni, op. cit., pp. 435–36.
12. Ibid.
13. Conze (1959, pp. 70–71). Italics have been removed.
14. Robinson and Johnson (1997, p. 43).
15. Conze, op. cit., p. 86.
16. Ibid., p. 54. Diacritics supplied.
17. Ibid.
18. Ibid., p. 90.
19. Ch'en (1968, p. 156).
20. Ibid., pp. 129–30.
21. Omvedt (2003, p. 262).
22. Graham (1967, p. 383).
23. Ibid., pp. 383–84.
24. Ibid., p. 383.
25. Ching (2002, pp. 376–77).
26. Ibid., p. 377.
27. Ibid., p. 378.
28. Ibid., p. 384.
29. Ibid.
30. Ibid.
31. Eichhorn (1967, p. 386).
32. Ibid.
33. Ibid., p. 388.
34. Ibid.
35. Ibid., p. 390.

36. Ibid., p. 394.
37. Ibid., p. 390
38. Ibid., pp. 390–91.
39. Ibid., p. 391.
40. Ibid.
41. Ibid., pp. 391–92.
42. Ibid., p. 392.
43. Ibid.
44. Ibid., p. 393.
45. Ibid., p. 393.
46. Ibid., p. 394.
47. Ibid.
48. Ibid., p. 395.
49. Ibid.
50. Ibid., p. 396.
51. Ibid.
52. Ching, op. cit., p. 406.
53. Eichhorn, op. cit., p. 401. This may not be entirely true. Taoism may have influenced the Yoga tradition of Hinduism.
54. Segal, op. cit., p. 56.
55. Segal, op. cit., p. 129.
56. Ibid.
57. Ibid.
58. Ibid., p. 56.
59. Ibid., p. 129.
60. Ibid.
61. Ibid., p. 130.
62. Ibid.
63. Zwi Werblowsky (1967, p. 29).
64. Ibid., p. 33.
65. Segal, op. cit., p. 129.
66. Smith, op. cit., p. 307.
67. Zwi Werblowsky, op. cit., p. 29.
68. Ibid., p. 31.
69. Radhakrishnan (1993 [1927], p. 40).
70. Cited, Smith (1963, p. 30).
71. Ibid.
72. Neill (2005, p. 6082).
73. Neill, op. cit., p. 6082.
74. Ibid.
75. Ibid., p. 6082.
76. Ibid.
77. Burke (1996, p. 305).
78. Neill, op. cit., p. 6082.
79. Burke, op. cit., p. 305.
80. Neill, op. cit., p. 6082.
81. Ibid., pp. 6082–83.
82. Ibid.
83. Neill, op. cit., p. 6083.
84. Ibid.
85. Ibid.
86. Ibid.
87. Ibid., p. 6084.

88. Ibid.
89. Ibid.
90. Basham (1967, p. 259).
91. Ibid.
92. Oxtoby (1983, p. 66).
93. Ibid., p. 67.
94. Ibid.
95. Ibid., p. 68.
96. Ibid., p. 61.
97. Neill, op. cit., p. 6084.
98. Ibid., p. 6084.
99. Ibid.
100. Arnold (1915, p. 746). It is possible however to look upon Khadījah as a case of spontaneous conversion rather than one sought.
101. Arnold, op. cit., p. 746.
102. Ayoub (2002, p. 348).
103. Arnold, op. cit., p. 746.
104. Ayoub, op. cit., p. 370.
105. Arnold, op. cit., p. 746.
106. Ibid.
107. Ibid.
108. Ibid.
109. Ibid.
110. Ibid., p. 747.
111. Arnold, op. cit., p. 747.
112. Ibid.
113. Ikram (1965, pp. 41–42).
114. Arnold, op. cit., p. 747.
115. Joshi and Josh (1994, p. 154).
116. Arnold, op. cit., p. 748.
117. Ibid., p. 748.
118. Ibid.
119. Ibid., p. 748.
120. Ibid., p. 748: "A fresh outburst of Muslim missionary zeal in Africa exhibited itself when the greater part of that continent was partitioned among the Powers of Christian Europe—Britain, France, and Germany; by establishing ordered methods of government and administration, and by facilitating communication by means of roads and railways, they have given a great stimulus to trade and have enabled that active propagandist, the Muslim trader, to extend his influence in districts previously closed to him and to traverse familiar ground with greater security."
121. Ibid., pp. 745–46: "The materials for the history of Muhammadan missionary activity are much less abundant than those for the history of the propagation of Christianity. Muhammadan historians appear to have been singularly incurious as to the spread of their own faith, and only scanty references to conversions are found at rare intervals in the vast historical literature of the Muhammadan world. The absence of a priesthood in Islām, implying the setting apart of a separate body of men as exponents of the doctrines of the faith, has had its counterpart in a lack of ecclesiastical annals; there have been no Muslim missionary societies (except towards the end of the nineteenth century), no specially trained propagandists, and very little continuity of missionary effort; even the religious orders of Islām, which have at times done much for the spread of the faith, have not cared to set on record the story of the success that has attended their preaching. There is, therefore, nothing in Muhammadan literature to correspond to the abundant materials for the history of Christian missions provided in the biographies of Christian saints, the annals of the Christian religious

orders, and the innumerable journals and other publications of the various Roman Catholic and Protestant missionary societies. In fact, the fullest details as to Muslim missionary activity are generally to be found in the writings of the Christian clergy who have watched with apprehension the rapid extension of Islām."

122. Ibid., p. 748.
123. Ibid., p. 748.
124. See Hackett (2008, pp. 1–2).
125. See An-Na'im (1999), Witte and Bourdeaux (1999), Witte and Martin (1999) and Sigmund (1999).
126. Mayer (2008, p. 38).
127. Claerhout and De Roover (2008 p. 58).
128. Mayer, op. cit., p. 59.
129. Ibid., p. 49.
130. Ibid.
131. Hackett, op. cit., p. 2.
132. Ibid.
133. Ibid.
134. Mayer, op. cit., pp. 35–52.
135. Ibid., p. 35.
136. Ibid., p. 36.
137. Ibid., p. 37.
138. Ibid., p. 38.
139. Ibid., p. 37.
140. Ibid., pp. 38–39.
141. Ibid., p. 39.
142. Ibid., p. 39.
143. Ibid.
144. Ibid., p. 40.
145. Ibid., p. 40.
146. Ibid.
147. Ibid., p. 41.
148. Ibid., p. 42.
149. Cited, ibid., p. 42.
150. Cited, ibid.
151. Ibid., p. 44.
152. Ibid., p. 45.
153. Kao (2008, p. 88).
154. Mayer, op. cit., p. 44.
155. Ibid., p. 46.
156. Ibid.
157. Sevnarine (1977).
158. Mayer, op. cit., p. 46.
159. Kao, op. cit., pp. 77–107.
160. Ibid., p. 78.
161. Ibid.
162. Ibid., p. 78.
163. Ibid., p. 79.
164. Ibid.
165. Ibid.
166. Ibid., p. 79.
167. Ibid., p. 81.
168. Ibid., p. 83.
169. Ibid., p. 83.

170. Ibid.
171. Ibid., p. 86.
172. Ibid., pp. 83–84.
173. Ibid., p. 97.
174. See Oxtoby (1983, pp. 61–62).
175. Ibid., p. 87.
176. Ibid., pp. 90–91.
177. Ibid., p. 91.
178. Ibid.
179. Cited, ibid.
180. Ibid., p. 92.
181. Ibid., p. 95.
182. Ibid., p. 96.
183. Ibid.
184. Ibid.
185. Ibid.
186. See Stahnke (1999, pp. 251–350, 2004, pp. 619–49).
187. Hackett, op. cit., p. 4.
188. Cited, ibid.
189. Ibid.
190. Cited, ibid.
191. Ibid., p. 6. See Mutua (2004, pp. 651–68).
192. Hackett, op. cit., p. 6.
193. Ibid.
194. Cited, Hackett, op. cit., p. 69.
195. Claerhout and De Roover, op. cit., pp. 53–76.
196. Ibid., p. 53.
197. Ibid.
198. Ibid.
199. Ibid.
200. Ibid.
201. Ibid.
202. Cited, ibid., p. 55.
203. Cited, ibid.
204. Cited, ibid., p. 55.
205. Cited, ibid.
206. Cited, ibid., p. 57.
207. Ibid., p. 57.
208. Ibid.
209. Ibid.
210. Dube and Banerjee Dube (2003).
211. Cited, Claerhout and De Roover, op. cit., p. 60.
212. Cited, ibid., p. 56.
213. Ibid.
214. Cited, ibid., p. 58.
215. Cited, ibid.
216. Ibid.
217. Ibid., p. 59.
218. Viswanathan (1998, pp. 211–39).
219. Claerhout and De Roover, op. cit., p. 60.
220. Ibid.
221. Ibid., p. 60.
222. Ibid., pp. 60–61.

223. Cited, ibid., p. 61.
224. Cited, ibid., p. 55.
225. Ibid.
226. Ibid., p. 60.
227. Ibid.
228. Ibid., p. 61.
229. Ibid.
230. Ibid., pp. 61–62.
231. Ibid., p. 63.
232. Ibid.
233. Ibid.
234. Ibid., p. 63.
235. Ibid., p. 64.
236. Ibid., pp. 64–65.
237. Ibid., p. 65.
238. Ibid., p. 65.
239. Ibid.
240. Cited, ibid.
241. Ibid., p. 66.
242. Ibid., p. 67.
243. Ibid., pp. 68–69.
244. Ibid., p. 69.

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Chapter 10
Religions: Missionary and Non-missionary

I

On the basis of the material presented in the previous Chapter, one is led to a classification of world religions, which is potentially significant for furthering our understanding of religious freedom. It is the distinction which is drawn within that category of world religions between missionary and non-missionary religions.

This classification of religions possesses a venerable pedigree. F. Max Mueller delivered a lecture on December 3, 1873 at Westminster Abbey, in the course of which he classified the various religions of the world into two categories: non-missionary and missionary religions.[1] He then proceeded to place Judaism, Brahmanism (or Hinduism), and Zoroastrianism in the first category, and Buddhism, Mohammedianism (or Islam), and Christianity in the second.[2] He then declared that the non-missionary religions were either dying or dead (or at least moribund) so that the "three religions which are alive and between which the decisive battle for the dominion of the world will be fought"—are Buddhism, Christianity, and Islam.[3]

This has turned out to be an enduring trope in the study of religion, even if the classification occasionally seems to fray around the edges. Thus Willard Oxtoby wrote in 1983, more than a century later:

> There are three great religions which have spread by missionary activity. Their communities transcend the boundaries of any one population, and their literatures have flourished in more than one language. These, in alphabetical and historical order, are Buddhism, Christianity, and Islam.[4]

The same classification is included as one of the ways religions of the world might be characterized under the rubric: *Some categories of religion,* in a volume on world religions by T. Patrick Burke. He writes:

> Some religions understand themselves as addressed to all men; their aim is to embrace all of mankind and they actively desire converts. These are sometimes called universal religions. This is not meant to imply that they actually do embrace the whole human race, which would obviously not be true, but that that is their ideal. Buddhism, Christianity, and Islam are universal religions in this sense.
>
> Other religions have no such universal aim, but understand themselves as existing only for a particular people, tribe, or nation. They usually do not especially desire converts.

A. Sharma, *Problematizing Religious Freedom*, Studies in Global Justice 9,
DOI 10.1007/978-90-481-8993-9_10,

> These religions may be called communal, tribal, ethnic, or national religions. Judaism and Hinduism are examples. Not all religions fit easily into this distinction: the Confucian and Taoist traditions, for example, neither aim explicitly to embrace the whole of mankind, nor consider themselves in principle restricted to the Chinese people: historically they have been identified with Chinese culture, but the main elements in them seem in principle capable of being adopted by others outside of that culture.[5]

The latest issue of the *Encyclopedia of Religion*, second edition, continues to abide by this classification. Although it does caution that "conversion studies necessarily deal with a much broader array of religions and topics than those confined to any of these three religions," it does consider "it important at the outset to note that Buddhism, Christianity, and Islam have been traditionally identified as conversionist (or missionary) movements."[6]

It is also significant that this categorization cuts across the classification of the world religions into Eastern and Western, thereby creating the hope of generating a fresh insight so far the issue of religious freedom is concerned. The role of Buddhism is crucial in this respect. As Jonathan S. Walters notes:

> The term *Buddhist mission* was invented in the 1830s to explain the religion's diffusion throughout Asia, and "missionary spirit" has been treated as an essential dimension of Buddhist spirituality in virtually all English-language works about Buddhism composed since. By the 1870s "Buddhist mission" had been theorized further by early historians of religions as a key plank in the subsequently ubiquitous disciplinary distinction between "missionary" or "world" religions (Buddhism, Islam, and Christianity) and "national" or "indigenous" religions (all the rest) which did not expand far beyond traditional geographical borders.[7]

It is specially worth noting how important a motive "compassion" rather than "conversion"[8] was in the Buddhist context and how Buddhist technologies

> could be adopted or participated in without any further claim upon the participant because there was no formal "conversion" requiring the renunciation of previous religious ideas and practices. The line between Buddhist and non-Buddhist was left gray, it being unproblematic (as far as Buddhists were concerned) to continue practicing previous religions, save perhaps in terms of their unproductiveness in the Buddhist context. Those whose interest became more serious were always free to adopt the five, eight, or ten precepts of a layperson, or even to take robe. Another beneficial absence among Buddhists was exclusion based on wealth, class, caste, gender, age, or educational/professional background. These higher levels of participation involved increasingly strict disciplinary codes but still nothing approximating the nineteenth-century idea of "conversion."[9]

The question of religious conversion is obviously central to this distinction. But the point needs to be examined closely because in some recent studies, the terms ethnic and universal religions have replaced the terms non-missionary and missionary religions as used by Max Mueller, although the distinction between the two—the ethnic and universal religion—is still drawn on the basis of the absence or presence of a missionary character. It is clear, therefore, that on a missiological approach, a universal religion is (a) one to which, in principle, anyone in the world can convert. By the same token it is also (b) a religion which aspires to convert everyone in the world.

Even from a missiological point of view, however, one must now take another look at the situation. The three religions of the world which were characterized as non-missionary by Max Mueller, and which are usually described as ethnic by modern scholars, namely, Judaism, Zoroastrianism, and Hinduism, have now started accepting converts. The conversion of such celebrities as Sammy Davis, Jr. and Elizabeth Taylor has no doubt a sensational side to it, but on sober reflection these cases do prove the point that it is possible to convert to Judaism, even though when one wishes to do so, a committee of Jews first tries to dissuade one from doing so. Cases of conversion to Zoroastrianism had been known to occur in pre-Khomeini Iran. I have this on the authority of a well-known scholar of Zoroastrianism.[10] And cases of conversions of Hinduism are so numerous that they need hardly be documented.

How, then, do these ethnic or non-missionary religions differ from the missionary or universal religions? In this, that the task of spreading the faith in them has not been raised to the level of religious duty and hence they do not proselytize. It must be borne in mind, however, that even if the ethnic religions do not aspire to spread all over the world, nevertheless, they now accept those who would join their ranks from all over the world. This development within the traditions has not been free from controversy but it must be recognized that it has occurred. On account of these developments, therefore, we must now distinguish between two uses of the word universal religion: (1) a religion which accepts converts from any part of the world; (2) a religion which seeks converts in every part of the world. One must now begin to carefully distinguish between these two meanings of the word universal religion.[11]

The point then is to resist the temptation of describing missionary religions as universal religions, as non-missionary religions could claim to be universal in their own way. Nor is the difference between missionary and non-missionary religions predicated on the *acceptance* of converts so much as the *seeking* of them. In other words, missionary religions may properly be called proselytizing religions.

II

If such is the case, then obviously religious freedom for the missionary religions would mean the freedom to seek converts. But if religious freedom is to be really free, then it must be freedom both to *convert to* and to *convert away from* any particular religion. How then do the missionary religions fare in this regard?

To begin with Buddhism. Something parallel to Jesus' "great commission" (Mt. 28:18–20) can be identified in an ancient passage which is "found already reworked in three canonical Buddha biographies, the *Mahāvagga* of the *Vinaya*, the *Mārasamyutta* of the *Samyutta Nikāya* and the *Mahāpadānasutta* of the *Dīghanikāya*."[12] The passages describe the Buddha declaring to his followers, upon realizing that they required no further guidance having become realized themselves:

> Wander about on wanderings, monks. For the good of many folk, for the happiness of many folk, out of compassion for the world, for the good and happiness of gods and men, don't two of you go by one [road]. Preach the *dharma*, monks, which is lovely at the beginning,

> lovely in the middle, lovely at the end, in meaning and sound. Demonstrate the purified celibate life which is fully complete. There are beings with little dust in their eyes; they are falling away from the *dharma* for not hearing it. There will be people who understand, monks.[13]

It may be noted that "today Buddhism is found in Ceylon, Burma, Thailand, Cambodia, Laos, Vietnam, Tibet, China, Japan, Mongolia, Korea, Formosa and in some parts of India, Pakistan [Bangladesh] and Nepal and also in the Soviet Union. The Buddhist population of the world is over 500 million."[14] Such a wide diffusion of the tradition is unlikely without vigorous missionary activity, which is attested to throughout Buddhist history.

It is also clear that people were also free to leave Buddhism, just as they were invited to join it. One was free to leave both the lay community and the monastic community.

Christianity also was a vigorously missionary religion from its very inception. Professor Krister Stendahl identifies the following three passages as the key ones in this regard:

(1) Acts 4:12:	. . *.for there is no other name under heaven given among human beings, whereby we must be saved.*
(2) John 14:6	. . . *I am the way, the truth, and the life: no one comes to the Father except through me.*
(3) Matthew 28:19	. . . *Go therefore and make disciples of all the nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit.*[15]

It is only in modern times that the Christian commitment to missionary activity has been apparently questioned in certain quarters. One such questioning pertains to the seeking of Jewish converts. Willard G. Oxtoby points this out in the broader context of pluralism and notes that the principle of pluralism poses a challenge to missionary activity. He writes:

> If diversity is inherently desirable, then what right do we have to go out and try to convert others to our faith? What right do we have to try to convert a Jewish neighbor, for instance? Christian evangelistic work aimed at Jews continues in some quarters, but since World War II it has been emphatically curtailed by the mainline denominations. I recall discussing world religions with the faculty of the Yale Divinity School during the 1960s, arguing for a deeper theological appreciation of other religions. In the course of the discussion I asked how many would support an effort to convert Jews to Christianity, and not one—not a single one—of the assembled theologians would express such a wish. Some were willing to support overseas missions among adherents of other traditions, but all could give theological or practical reasons for pluralism when it came to Jewish identity.[16]

At the same time it is worth noting that,

> For some Christians who take a strict literal view of the Bible, the establishment of the State of Israel is foretold in Scripture, and Old Testament promises to ancient Israel, such as possession of land, are still binding. For a few, the expected end of the age is associated with various signs of renewal, such as the restoration of Israel's power and the conversion of the Jews. They see the modern state as the first of these, and eagerly await the second.[17]

Recent Christian reflection of the liberal ilk also tends to question the value of missionary activity in relation to formerly colonized countries. Thus, for Willard Oxtoby,

> The word "missionary" has a positive as well as a negative significance. We speak of missionary zeal, a sense of dedicated self-sacrifice, as the altruistic desire to share one's belief with others. But today, especially in colonial or post-colonial lands, the word also suggests cultural and religious imperialism. Westerners in the nineteenth century frequently confronted peoples of different traditions with a smug statement of superiority. Westerners used both the carrot and the stick: they offered employment or other advantages to their converts (hence the term "rice Christians"), and they backed up their cultural and intellectual assaults not only with the promise of hellfire hereafter but with some very here-and-now gunboats. Thus the missionary's reputation is ambiguous: a self-invited guest who wishes to take over.
>
> Are missions doing more harm than good? Must Christianity inevitably be a missionary religion? How else is one to interpret Matt. 28:19: "Go therefore and make disciples of all nations, baptizing them..."? In our century, the need to "re-think" missions has been felt urgently, particularly as several facts have come home to the churches in the Western world.[18]

Leaving Christianity as part of religious freedom wasn't much of an option in the medieval times, and, even with the onset of modern times, the Christian message was often brought to the Americas with the force of arms, so far as the natives are concerned. But in modern day Christian countries people are free to leave Christianity of their own free will, and often do so.

This symmetry between entering and leaving a religion as a mark of religious freedom is thus obviously realized in the Buddhist case, and substantially in the Christian. It however runs into a problem in the case of Islam. One may begin by recognizing that being or becoming a Muslim is a fairly straightforward matter.

> In practical implementation, a Muslim is often someone born to a Muslim family and thus a member of the Muslim community. Or one can become a Muslim by repeating before two Muslim witnesses the *shahādah*, or profession of faith: "I bear witness that there is no god except God, and I bear witness that Muḥammad is the messenger of God." By so doing, such a man or woman becomes legally a Muslim with all the rights and responsibilities this new identity entails. Whether what this person publicly professes with the tongue is what he or she truly holds in the heart, Muslims assert, is only for God to judge. There is no other ceremony required for one to become a Muslim.[19]

Islam looks upon itself as the final revelation so that the missionary spirit gets woven into the very fabric of the tradition. At one time it was thought by some that there was no separate word for a missionary in Islam, so close was the association between being a Muslim and spreading it. This is not quite true. There is a term, *da'wa*, in Arabic for the missionary enterprise but the mistaken impression is correct in the sense that the missionary outlook pervades Islam.

Unlike Buddhism and Christianity, however, leaving Islam is problematic. The penalty for apostasy in classical Islamic law is death.[20] Saudi Arabia memorably abstained when the Universal Declaration of Human Rights came up for vote at the United Nations in part because the "right to change his religion or belief was considered problematical."[21]

III

Buddhism, Christianity, and Islam actively seek converts and this is what makes them missionary, or, more accurately, proselytizing religions. But what about the attitude of other religions to proselytization, such as Hinduism, and Judaism, and the Chinese religions. No discussion of the matter could be considered adequate without taking their views into account.

One way to advance the discussion of the Hindu view of conversion would be to distinguish between a missionary religion and a proselytizing one. A religion may have a sense of mission and that would make it a missionary religion. But if this sense of mission does not include converting others to its exclusive and exclusionary membership, then it would not qualify as a proselytizing religion, while remaining a missionary one. This seems to be purport of the following remarks by S. Radhakrishnan:

> In a sense, Hinduism may be regarded as the first example in the world of a missionary religion. Only its missionary spirit is different from that associated with the proselytizing creeds. It did not regard it as its mission to convert humanity to any one opinion. For what counts is conduct and not belief. Worshippers of different gods and followers of different rites were taken into the Hindu fold. Kṛṣṇa, according to the *Bhagavadgītā*, accepts as his own, not only the oppressed classes, women and Śūdras, but even those of unclean descent (*pāpayonayaḥ*), like the Kirātas and the Hūṇas. The ancient practice of Vrātyastoma, described fully in the *Tāṇḍya Brāhmaṇa*, shows that not only individuals but whole tribes were absorbed into Hinduism.[22]

The point could also be stated in terms of the concept of conversion by instituting a distinction between vertical and horizontal conversion. T.M.P. Mahadevan explains the distinction as follows: "real conversion is vertical—i.e. from the lower to the higher conception of God, and not horizontal—i.e. from one formal faith to another."[23]

Modern Hindu thought, by and large, is opposed to the phenomenon of conversion either from or to Hinduism, on the ground that it places the relationship among religions on an unduly competitive and even negative basis. Each tradition should endeavour to change the life of its believers, to make a Hindu a better Hindu, a Muslim a better Muslim and a Christian a better Christian, as has often been said, instead of trying to convert others to Hinduism, Islam or Christianity. In keeping with this attitude, modern Hinduism discourages people from *converting to* it, no less than discouraging Hindus to *converting from* it.

Judaism did allow for conversion early on in its history. Alan Segal notes, for instance:

> Endogamy, or marriage only within the group, is the most common marriage system in human society. But in the Hebrew case, it is also part of a larger symbolic system in which the holiness of the people is protected by concentric circles of exclusion, culminating in the purity of the high priest as he enters the inner sanctum of the temple on Yom Kippur, the Day of Atonement.
>
> Avoiding foreign women had been a prohibition dominant in pre-exilic traditions. One reason apparently was the Canaanites' practice of child sacrifice, something that continued

even into Roman times. Worship of Yahweh entailed marrying within Abraham's family; this guaranteed a national life through the gift of progeny, the very opposite of Canaanite child sacrifice.[24]

He goes on to say:

Conversion into Judaism was the countervailing policy that allowed the program to work. The biblical book *Ruth* names a woman of the neighbouring Moabites as an ancestor of King David. The story was edited as a polemical tract dramatizing the new change of status that would come to be called conversion. In this romance, the implicit metaphor is marriage into the family—rather than intermarriage, marriage out of the family. Even David's ancestors enter the family of Israel from without, thus legitimizing the practice for later generations. The people of the covenant are defined ideologically, not just genealogically.[25]

In rabbinical Judaism, however, the following self-understanding of Judaism took shape which has lasted to this day.

Jews understand that God expects fundamental moral conduct of everyone, revealed to all humanity in a covenant to Noah after the primeval flood and accessible to the entire human race through reason.

In a subsequent covenant God promises, "I shall be your God and you shall be my people." The obligation to practice a number of special rules sets them apart from all other peoples and enforces upon them a system of holiness commanded by God. Jews think of themselves as God's special people, not in any racial sense but only in the sense that they are elected to a special responsibility, to serve as God's priests in the world.[26]

What, then, about the attitude of Jews to those who want to convert to Judaism? The following remarks of Alan Segal address this issue directly:

Jews never explicitly eschewed conversion, and accept converts willingly today, when the political environment and the sincerity of the convert permit it. To some non-Jews, it may appear weak not to bear witness to one's faith by proselytizing, but the Jew feels that one does not need to convert a righteous gentile to assure his or her salvation. It is enough to preach that everyone should be righteous, which makes one the equal of a Jew in the eyes of God. Rather, conversion is reserved for those who want to join their fate with the people of Israel.[27]

Confucianism made a deep impression in China, where it was broadly the regnant political doctrine for around 2000 years and also profoundly influenced Korea, and Japan as well.[28] But the application of the idea of proselytization in the usual sense is problematical in the case of Confucianism,[29] despite the interesting biographical detail about Confucius that "on one occasion [Confucius] thought of going to live among the barbarians, and when it was suggested that he would find their boorishness intolerable, replied: 'Would they be boorish if a gentleman lived among them?' (*Analects* ix.13)".[30]

Taoism has rarely been a proselytizing religion. It has "always been a peculiarly Chinese religion and was never propagated among non-Chinese peoples."[31] This does not mean that it may have nothing to offer to the contemporary world, for, "Taoism, by its tradition, is certainly in an excellent position to promote peaceful coexistence and fair social conditions for everybody."[32] But this message would presumably be conveyed by example rather than proselytization.

IV

We started out by examining the word *religion* in the expression "religious freedom" and discovered that it does not posses a universally acceptable meaning. We further discovered that if we took the actual religions into account—religions which are usually referred to as world religions—then, far from being merely individual manifestations of a general term, they tended to cluster. Such a cluster-effect was obvious in the case of their classification into Eastern and Western religions, when the division possessed both a geographical and a doctrinal dimension. This classification of world religions as missionary and non-missionary was then explored in the light of their ideologies regarding proselytization.

One must now ask the key question: Does this classification of religions into missionary and non-missionary possess any significance for the concept of religious freedom and if so, what? We noted earlier that the concept of freedom of religion as articulated in Article 18 runs as follows: "Everyone has the right to thought, conscience and religion," and then proceeds to read: "This right includes freedom to *change his religions or belief*." It is worth noting again that when it came up for discussion, "the Muslim delegates were . . . divided on Article 18's freedom to change one's religion. Though the right was arguably implicit in the general principle of religious freedom [Charles] Malik's insistence that it be spelled out had made the article controversial."[33] Jamil Baroody of Saudi Arabia was its "most outspoken critic. His delegation supported freedom of conscience and religion but objected to the right to change one's religion because *proselytization historically has caused so much bloodshed and warfare*."[34] It is worth noting that the objection it this instance is *not* based on the ground of its conflict with the provision against apostasy in Islam,[35] but on the perils inherent in flinging open the door of freedom of religion to let conversions in.

One is thus led to list the issues that arise, largely from the point of view of non-missionary religions, if the right to change one's religion is identified as an element in religious freedom. Or, in other words, does proselytization complicate the issue of religious freedom and, if so, how?

(1) Swami Dayananda Saraswati, a contemporary Hindu religious leader (who should not be confused with his namesake who was a Hindu reformer of the nineteenth century) has argued that proselytization—or asking someone else to change his or her religion is a form of *religious violence*.

(2) It has further been argued that proselytization involves convincing the other person that he or she is on the wrong side of truth. Since this an a priori assumption inherent in proselytization, it contributes to the abuse of religious freedom because the proselytizer must demonstrate the inferiority of the other party. Proselytization, in this way, promotes *religious misrepresentation*, as the object of proselytization must be looked upon as in some sense inferior.

How deep this need to look upon a proselytized people as not equal to the proselytizer in equality and dignity could be, may be gauged from the following

passage which is imbued with a liberal sensibility but in this one respect unable to accommodate the other party.

> Through centuries millions of men and women have lived by the teaching that they have received in these various religions, and, therefore, these may not be treated as though they did not matter, even though some of their teachings may be displeasing to the adherents of other religions. So one who engages in dialogue with those of faiths other than his own must come to it in the spirit Chaucer described in the words "gladly would he learn and gladly teach." Confident in the value of what he has experienced through his own faith, the Christian is able to delight in everything that he learns from others of what is true and good and beautiful, and *at the same time maintain his hope that those who have seen in their own faith what he must judge to be partial may come to find the full-orbed reality of the true, the good, and the beautiful as he himself has seen it in Jesus Christ.* If mission is understood in this sense, some of the asperities of the missionary approach in the past may be mitigated.[36]

(3) Proselytization may contribute to political tension. Max L. Stackhouse points out:

> One notable feature of the phenomenon of "mission" and "resistance" is that missions that do not succeed among the intellectual and political-economic elites of a new country but that do succeed among the people become fatefully drawn into perennial tensions between the rulers and the ruled. If conversion is successful among the masses but not among leadership, intense resistance results. If conversion occurs only among marginal groups, ethnic conflict is frequent, and minorities are suspected of being agents of foreign powers. If missions are successful among some sections of the leadership and among wide segments of the people, the stage is set for a revolutionary change.[37]

(4) Missionary activity is often associated with commercial activity—and "those societies which send merchants farthest and equip caravans or ships the most extensively for trade are usually the more highly developed economically, politically, militarily and socially. It would not be strange for them to hold the view that their 'superiority' in this respect is due, in substantial part at least, to the 'superior' religious, spiritual, and ethical foundations of their faith. In an influential study, Edward Said ... has argued that this accounts for the various condescending projections of Eastern cultures by Western merchants, soldiers, and missionaries."[38]

(5) It is widely noted that the "economic ties of a missionary enterprise with its own country of origin or with the elites of the host country are a source of enormous distrust of missionary activity."[39]

(6) The dealings among religions are complicated by proselytization, even when carried out among proselytizing religions. Thus

> During the early nineteenth century, Buddhist monks allowed Christian missionaries to use their temples for rallies and politely refused challenges and taunts that they debate comparative doctrine or salvation; missionaries regularly complained that Buddhists would listen to sermons and even enact approbation without undergoing the existential "conversion" that was a hallmark of Christian missionary discourse and expectations. Rather than catalyze revision of the (Western, Christian) presuppositions that made "mission" an essential dimension of Buddhist religiosity, however, this actual lack of it was treated as a failure of Buddhists to live up to their own essence.[40]

The following details provide yet another example of it.

> Nineteenth- and twentieth-century writings on Buddhist (and Muslim) mission made available for study an "other" mission to juxtapose with Christian mission. This comparative framework originally contributed to Christian missionary self-confidence, portraying their approach as a middle-ground between overly forceful (Muslim) mission and overly tolerant (Buddhist) mission. Beginning in the 1870s, however, a growing number of Western Buddhist sympathizers turned this discourse upside-down, using the "tolerance" of Buddhist mission to chastise Christian evangelism, a comparison that, eventually internalized by missionaries themselves, played an important role in the general abandonment of evangelical missions by mainstream Protestant churches since World War II.[41]

(7) From mission to coercion is but a step as illustrated by the fact that the Roman emperor Justinian accepted "coercion as a legitimate instrument of conversion to Christianity."[42]

(8) Insufficient distinction is drawn, especially in the Christian case, between conversion to Christ and conversions to the Church—of the two components of Christianity—Christ and Church. "Conversion to Christ is not necessarily identical with acceptance of the Church; but in the vast majority of cases this follows, though this second acceptance may prove to be more difficult than the first."[43]

(9) The question of proselytization may not just be an individual issue in certain cultural contexts. It has been pointed out for instance, that

> Alan Roland's self theory postulates variable dimensions of self that are virtually universal but have different valence or importance in various cultures. Roland suggests that the five dimensions constituting the whole self are the individual self, the family self, the spiritual self, the developing self, and the private self. For instance, in India and Japan, the family self is more developed and most people in those countries tend to be focused on the family aspect of selfhood. Multicultural theories of conversion take into account, for instance, the norms of individual self and family self in their assessment of conversions dynamics. Whereas in the West, where the norm is the isolated, autonomous convert, people from some non-Western cultures may convert "en masse," as a group mirrors their contours of selfhood. A viable theory of conversions required recognition of different forms of selfhood in the person and group and the contours of selfhood subsequent to conversion. Likewise, other social scientific theories of conversions, namely those from anthropological and sociological perspectives, require sensitivity to the perspective of the Western or non-Western assumptions regarding the role of culture and society in the motivations to convert.[44]

(10) Missionary activity during the past few centuries has been so closely allied with imperialism that it now provokes its spectre. Hence the relevance of the question raised by Stephen C. Neill at the end of this citation:

> For more than four centuries the Western powers have exercised a dominating influence on the destinies of the rest of the world. Since so many people, especially in Muslim countries, have identified in the West with the Christian West, there has been a natural tendency to regard Christian missionary enterprise as no more than an expression of Western aggression and imperialism. How far is there any adequate basis for this equation?

Neill's own answer is that while "clearly no human motives are entirely pure," yet "only in a minority of cases can it be shown that national and imperialistic motives have played a strong part in missionary devotion."[45] To an extent this answer misses

the point. The charge is not that imperialism has missionary motives but that the missionary enterprise itself is imperialistic in nature. This comes out more clearly elsewhere in Stephen Neill's account of Christian missions, when he writes:

> As a world phenomenon, the Christian church has not remained unaffected by the violent changes that have taken place in the troubled modern world. During the nineteenth century the dominant nations and the churches which were dependent on them assumed that they could plant Christian missions wherever they pleased, sometimes imposing their will by force on unwilling peoples. In the twentieth century all this has changed. A number of nations (e.g. Burma, Guinea, Saudi Arabia) prohibit all religious activity by foreigners which is directed at native citizens. A number of others make it very difficult for missionaries to obtain visas or residence permits. Yet others (e.g. Nepal) admit missionaries with few restrictions, but only on condition that they engage in what the government regards as nation-building activities (such as educational or medical services). Where all access is made impossible, churches in neighboring areas fall back upon the help that can be rendered by prayer alone.[46]

It must not be forgotten that Christianity felt, at the height of the age of imperialism, that it might take over the world, just as it took over Rome. Stephen C. Neill remarks, while commenting on the first world missionary conference in 1910:

> The year which followed were marked by a number of major setbacks to Christian missionization, such as the Russian revolution and the fading of religion in many Western communities. Yet the *World Christian Encyclopedia*, edited by David B. Barrett (1982) makes it plain that the achievements of the prior seventy years had been greater than those of the preceding century. For the first time in history the possibility of a universal religion appeared a reality. Roughly one-third of the inhabitants of the world had come to call themselves Christians. The progress of Christian missions continues in almost every area of the world. In India, Christians, already the third largest religious community after Hindus and Muslims, are also the most rapidly increasing in number.[47]

It should be remembered that when in 313 "Constantine made Christianity the religion of the empire. . .its followers cannot have numbered more than 10% of the population."[48]

(11) When the proselytizing religions expanded in pre-modern times, they often did so not so much at the expense of each other but at the cost of folk or tribal religions. However, now, "increasingly, the great missionizing religions are confronting not only the primal or folk religions, where missionary activity has been most pronounced, and not only the social needs in various contexts, where missionary activity has been remarkable, but one another."[49]

The modern world, however, has now become so closely connected, a "global village" as it were, to yield to cliche, that the various religions and civilizations can no longer avoid confronting one other directly, and one famous scholar, Samuel P. Huntington, has already chosen to view the coming encounter in almost apocalyptic terms. The process of globalization has further speeded up since he wrote his seminal essay in 1993. His view is however one of many[50] but there is little doubt that the world in which we live has radically changed, is radically changing, and we need to examine the whole question of proselytization afresh.

V

In the context of the contemporary world, the distinction between missionary and non-missionary religions, or more precisely, between proselytizing and non-proselytizing religions also possesses perhaps even more far-reaching implications for our understanding of religious freedom.

The distinction seems to be important on at least three counts. The first has to do with the formal articulation of the right to religious freedom. In most formulations of this right, the right to *practice* the religion as well as to *propagate* it is usually included. It is clear that non-missionary religions would see no need to include the freedom to propagate one's religion as an essential component of religious freedom, although the right to practice it would be considered integral to it. In other words, those legal definitions of religious freedom which include the right to propagate religion as essential to religious freedom reflect the perspective of missionary rather than non-missionary religions. Its inclusion in the definition caters to a particular religious constituency and is therefore potentially parochial rather than universal.

The second has to do with the fact that, in view of this distinction, the same prescription in terms of religious freedom produces opposite consequences in terms of missionary and non-missionary religions.

Let us for instance take the hypothetical example in which we urge all religions to become more "liberal" in terms of religious freedom. Then the implication of this for non-missionary religions would be that they now *start* accepting converts if that was not the case earlier, as for instance, in the case of primal religions or Zoroastrianism. The implications for missionary religions would be the opposite—that they now *stop* targeting others for conversion.

It is however the third count which is potentially the most significant. In the event of an interface between proselytizing and non-proselytizing religions, the non-proselytizing religions often begin to feel that they are labouring under a disadvantage, as the proselytizing religions are able to target them for conversion, and the non-proselytizing religions are unable to respond in kind. This is the reason why the proselytizing religions—specially Christianity and Islam—have even been described as "predatory religions" by the spokespersons of the non-proselytizing religions, who feel victimized by this imbalance. The response to this charge of victimization has often been that the non-proselytizing religions should stop being "protectionist" and face the challenge of free trade in religious ideas. The problem however is that such religious confrontation is often accompanied by an asymmetry in terms of power and resources, which tends to favour the proselytizing religions.

Two very important consequences are likely to flow from such an asymmetrical confrontation between the proselytizing and non-proselytizing religions, if the non-proselytizing religions resist the attempt to be run over under the banner of religious freedom. The victimized religions will use whatever avenue is available to them to redress the balance. The introduction of the various Freedom of Religion Acts in some of the state legislatures in India should perhaps be viewed in this light. These acts do not ban conversion but seek to regulate it. This could be viewed as an attempt by the non-proselytizing Hindu tradition to offset the *financial and organizational*

advantages enjoyed by the proselytizing religions in India, particularly Christianity, by flexing its muscles politically. In other words, the attempt to extend religious freedom, without keeping the distinction between proselytizing and non-proselytizing religions in mind, may result in the abridgement of religious freedom.

The point may also be raised, although it is more concerned with fairness than freedom, whether we need to nuance the concept of religious freedom in the sense that its operation in a context which involves interaction among the proselytizing religions should be distinguished from its operation in a context which involves interaction among non-proselytizing religions, and further if special safeguards may be required to protect the freedom of religion of non-proselytizing religions from becoming victims of proselytization.

The effort to draw distinction between missionary and non-missionary religions may seem a neutral academic exercise to begin with, but when it comes to the real world, such neutrality tends to break down. Academic discourse tends to treat all religions on par as individual entities, without taking into account the power equations between them. These power equations however cannot be ignored in the real world, for the relationship between the various religions, and specially between missionary and non-missionary religions, may get distorted on account of the difference in the power equations between them. An interesting example of this is found in the following extract from the writings of the Hindu reformer, Raja Rammohun Roy (1772/1774–1833). The passage is an extended one but rewards our patience. He begins by observing:

> For a period of upwards of fifty years, this country [Bengal] has been in exclusive possession of the English nation, during the first thirty years of which from their word and deed it was universally believed that they would not interfere with the religion of their subjects, and that they truly wished every man to act in such matters according to the dictates of his own conscience. Their possessions in Hindoostan and their political strength have, through the grace of God, gradually increased. But during the last twenty years, a body of English Gentlemen who are called missionaries have been publicly endeavoring, in several ways, to convert Hindoos and Mussulmans of this country into Christianity. The first way is that of publishing and distributing among the natives various books, large and small, reviling both religions, and abusing and ridiculing the gods and saints of the former; the second way is that of standing in front of the doors of the natives or in the public roads to preach the excellency of that of others; the third way is that if any natives of low origin become Christians from the desire of gain or from any other motives, these Gentlemen employ and maintain them as a necessary encouragement to others to follow their example.[51]

Then he goes on to say:

> It is true that the apostles of Jesus Christ used to preach the superiority of the Christian religion to the natives of different countries. But we must recollect that they were not the rulers of those countries where they preached. Were the missionaries likewise to preach the Gospel and distribute books in countries not conquered by the English, such as Turkey, Persia, & c. which are much nearer England, they would be esteemed a body of men truly zealous in propagating religion and in following the example of the founders of Christianity. In Bengal, where the English are the sole rulers, and where the mere name of Englishman is sufficient to frighten people, an encroachment upon the rights of her poor timid and humble inhabitants and upon their religion cannot be viewed in the eyes of God or the public as a justifiable act. For wise and good men always feel disinclined to hurt those that are of much

> less strength than themselves, and if such weak creatures be dependent on them and subject to their authority, they can never attempt, even in thought, to mortify their feelings.[52]

Roy is warning that a proselytizing religion, when dealing with other religions from a position of power, is a different proposition, than when dealing with them while not exercising power over them. For our purposes however, the point has to be developed further. In the passage he refers to Christians as trying to convert both the Hindus and the Muslims of India. The point however needs to be refined for our purpose, for although Roy has bracketed the Hindus and the Muslims, the two of them are *not* on par vis-à-vis Christianity, because while Christianity and Islam are both proselytizing religions, Hinduism is not.

This leads to the general point: Is it fair to allow proselytizing religions the same level of freedom in the context of their dealing with non-proselytizing religions, as allowed to them when they are dealing with *another* proselytizing religion. From the point of view of the non-proselytizing religion, the proselytizing religions are "predator" religions which prey upon the non-proselytizing religions, the "quarry." Perhaps an analogy from boxing might be invoked again. Boxers are graded according to weight into "heavy" or "light" and then the contenders then fight for the championship within these two distinct categories. There is no point in matching a heavyweight boxer with a lightweight boxer, for the outcome is going to be as unsalutary as it is predictable.

Is it then unreasonable to propose, in the interest of fairness, that religious freedom too should have two levels: represented by the face-off between the proselytizing religions like Christianity and Islam on the one hand, and between the non-proselytizing religions like Judaism, Hinduism, and Primal Religions on the other? In other words, normally only conversion within the two categories should be permitted and not across them. Religious freedom has little meaning without religious fairness.

This might seem like a farfetched idea until we realize that such nuancing of religious freedom is already a reality in some situations. There is growing feeling in some Christian circles that Jews are *not* an appropriate target for conversion.[53] The state of Indonesia legally forbids seeking converts from among the five religions it officially recognizes: (1) Islam; (2) Buddhism; (3) Hinduism; (4) Christianity, i.e. Catholicism and (5) Protestantism. One is permitted to seek converts outside the pale of these five religions, but so far as these five religions are concerned proselytizing activity among them is not permitted, although individuals remain free to change their religion should they wish to do so.

The Indonesian position may represent a political expression of the fact that

> In general, missionaries for the major religions have been more successful in recruiting converts from the religions of small-scale tribal societies than from the other major religions. This may not have occurred for solely religious reasons; the material culture and technology of the major civilizations has conferred a powerful advantage on those who possessed it. Writing systems and literatures are an important part of that technological advantage, as the major traditions with their scriptural literatures have impressed primarily oral cultures and have been able to shape the target societies' values with the content of the written documents they have introduced.[54]

VI

Another way in which the religions differ is how they come into being. That is to say, in the case of some religions the togetherness of the followers comes first, and their beliefs and rites and practices are an expression, even a celebration, of this togetherness.[55] The Primal Religions, Rabbinical Judaism and Hinduism are major examples of this type of religions. In the case of other religions, the religious community itself coalesces around a set of doctrines and practices; these come first, and the community follows. Christianity and Islam are good examples of this type of religion. The reader will doubtless notice that such a sociological classification of religion seems to virtually coincide with the division of religions into those which are not usually considered proselytizing and those which are. It stands to reason that religions which grow "organically", as it were, will be less prone to seeking converts. Even if no less keen on growing than the missionary religions, there growth is likely to be demographic. The missionary religions, by contrast, grow "electively," by recruiting people to join them, often individually or in groups, or because people elect to join them on their own.

The sociological nature of the classification, however, enables us to advance our discussion of the concept of religious freedom in terms of group versus individual rights and once again a point of tension in the discourse on religious freedom can be identified, which has been hinted at in the literature but not yet identified with analytical precision. We noted how the group comes first in one type of religions which might be described as *communitarian*, while, in the other case, the adherence of the followers to the religion may be described as *associational*. If this distinction is kept in mind, then the tension around the question of group rights and individual rights in relation to religious freedom can be seen in a new light. Because religions such as the Primal Religions, or Judaism or Hinduism are communitarian in nature, they have a greater stake in a situation when an individual leaves them and converts to another religion because it dilutes the community. It could be argued that even a follower of Christianity or Islam also dilutes the number of the followers of these religions by leaving it. This is true but the situation is not entirely symmetrical. As the *identity* of the communitarian religions is organic, the wrench of losing a member is greater and inflicts ideologically and demographically a deeper cut, than if the nature of the identity is associational. That is to say, while no religion likes to lose its members in general, one needs to pass beyond this sentiment to analytically grasp the fact that the loss of a member has greater structural cost for a communitarian religion than for an associational one. Or if would rather use the idiom of human rights, communitarian religions would tend to favour a group rights approach to the issue, and associational religions an individual rights approach.

These predispositions have important consequences for how religious freedom comes to be construed. The communitarian religions would then interpret such freedom as their right to be able to maintain the religious community intact and free from being preyed upon, while the associational religions would interpret religious freedom as both freedom to change one's religion or to ask someone to change one's religion.

A parallel drawn from a burgeoning debate in the medical field may help clarify and advance the point. It can be viewed in terms of a tension between First and the Tenth Amendment in the United States. The First Amendment, through its free exercise clause, protects religious expression. However, the Tenth Amendment gives to the states the power to protect the health, safety and welfare of the citizens and thereby to regulate professional health care practices. It is worth noting in this case that

> The constitutional collision between individual freedom and the states' rights to regulate pursuant to the Tenth Amendment has received little scholarly attention, largely because, in most instances, states' rights have trumped. For example, in a landmark 1905 case, *Jacobson v. Massachusetts*, the U.S. Supreme Court upheld the state's right to order compulsory vaccination for public schoolchildren and rejected the argument that vaccination violated the individual's "inherent right of every freeman to care for his own body and health in such way as to him seems best." The court observed that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members." In *Jacobson*, the state's obligation to protect its citizens against public health risks was—and typically has been since—deemed superior to the individual's claim to a right to make autonomous health care choices for his or her own body.[56]

Note that in these instances group rights have trumped individual rights. It may be worth adding that: "Similarly, while courts have found constitutional protection for medical choices such as contraception, abortion, and the right to be disconnected from artificial life support, most courts have refused to recognize a constitutional, privacy-based right to obtain the treatment of one's choice (for example, acupuncture) against the objections of a state regulatory body (such as a medical licensing board)."[57]

The point which emerges from the consideration of these cases then is the following:

> Whether or not such decisions are correct as matters of constitutional interpretation, they do suggest an underlying hierarchy of values when it comes to clashes between the personal choices involving the conflux of religion and medicine. Religious practices involving health are frequently swept into the conceptual category of medicine and its regulation. In this way, the legal system checks individual healing choices and challenges healing impulses in medical as well as religious personnel that represent potential incursions on state determinations of the legally accepted boundaries of healing. Concomitantly, the medical profession itself has adopted an arguably hegemonic definition of its own scope of practice, and the definition tends to sweep spiritual healing choices under medicine's rubric.[58]

This point has a double bearing on the discussion of religious freedom, although this may not be obvious immediately. The first is the issue of the "underlying hierarchy of values." There can be little doubt that religious freedom, as currently understood in Western human rights discourse, reflects such an underlying hierarchy of values in favour of individual rights. The second is that the discourse on religious freedom has also "adopted an arguably hegemonic definition of its own scope."

It is *theoretically* possible that an imperiled religious community, such as the Parsis in India, may be able to convince the state that it requires state protection to preserve itself and that therefore the group right of all Zoroastrians should prevail,

over the individual right of a Zoroastrian to secede from this microscopic community via conversion, which should be curtailed, so that the Zoroastrian community could survive. The case of the Parsis illustrates that the emergence of such a situation is also *historically* possible.

The current discussion of religious freedom in human rights discourse does not seem fully equipped to tackle such situations. A parallel from the field of economics may be helpful here. Economists talk about "free trade," a concept quite analogous to "religious freedom" in its own way. Such free trade seems to work well between two countries on the same level of economic development. There is also a tendency however to extend this doctrine to the economic relationship between an economically developed and an economically developing country, by people oblivious of this difference. Such "free trade" however would lead to the destruction of the nascent industries in the developing countries unless properly monitored. The uncritical application of the doctrine of free trade is bound to give rise to protectionist sentiment in the developing country. The point then is that "religious freedom" and "free trade" can become heady slogans, which become counterproductive if applied without an awareness in the power-equations existing between the parties involved.

Another example of how one's concept of religious freedom cannot be divorced from one's concept of religion is provided by the relative role assigned to dogma and praxis in one's conception of it. It is well-known that creedal formulations play a vital role in the Christian and Islamic understanding of the word "religion." This holds the key to the fact that Article 18 refers to "freedom to change his religion *or* belief"[59] in the same breath. And Christianity's commitment to correct belief is well known.[60]

If however praxis is more important than belief in one's conception of religion, then those who adhere to such a concept of religion would tend to speak of one's "freedom to change his religion or *practice*" rather than "the freedom to change his religion or belief." The phrase "religion or practice" only sounds odd because our ears are more attuned to the pairing of religion and belief. Consider, for instance, the following perspective:

> After all, what counts is not creed but conduct. By their fruits ye shall know them and not by their beliefs. Religion is not correct belief but righteous living. The truly religious never worry about other people's beliefs. Look at the great saying of Jesus: "Other sheep I have which are not of this fold." Jesus was born a Jew and died a Jew. He did not tell the Jewish people among whom he found himself, "It is wicked to be Jews. Become Christians." He did his best to rid the Jewish religion of its impurities. He would have done the same with Hinduism had he been born a Hindu. The true reformer purifies and enlarges the heritage of mankind and does not belittle, still less deny it.[61]

This has a direct bearing on religious freedom because a clear distinction is drawn between freedom of *belief* and freedom of *practice* in the literature on the subject and the point is made that while one might *believe* whatever one likes, one is not free to *practice* whatever one likes. One is free to believe, for instance, that all unbelievers should be killed but one is prevented by the laws of the land from carrying out

this belief in practice. The fact that practices—that is, customs and usages—change more slowly than beliefs adds an interesting convolution to this issue.[62]

An even subtler point may be involved. Followers of non-proselytizing religions, specially Hindus, are usually quite willing to join the followers of other religions in some or even many of their practices, but from this it does not follow that they have accepted the creedal beliefs of those religions for themselves as their only beliefs. From such a perspective, one would be more sensitive, in the discussion of religious freedom, regarding the freedom one possesses to participate in the practices of others, as compared to the freedom allowed to one in accepting the beliefs of others.

Notes

1. Mueller (1875, p. 253).
2. Ibid., p. 254.
3. Ibid., p. 256.
4. Oxtoby (1983, p. 38).
5. Burke (1996, p. 6).
6. Bradley (2005, p. 1969).
7. Walters (2005, p. 6077). Also see p. 6078: "At the same time, as mentioned above, Buddhist mission was central to the classification of religions into 'world' and 'national' types, a classification whose persistence (sometimes in modified language) belies its foundation in fact, despite the problematically 'missionary' framework through which the global reach strongly characteristic only of Buddhism, Christianity, and Islam has been theorized." This despite the fact that (1) so far as the Buddhist great commission is concerned (ibid., p. 6077): "The passage in question was not portrayed as a commission to all Buddhists; the point was that only the first sixty (and presumably subsequent) saints were free to wander forth unguided by the monastic discipline. But removed from such literary contexts, constructed grammatically to make the wandering dependent upon the preaching rather than the other way around (which is possible, though against the grain of the commentarial tradition), and translated into biblical English, this passage was easily read as a much-remarked parallel to Jesus' (*Mt.* 28: 18–20)." (2) Although referred to as mission, the pre-modern Buddhist tradition "lacked specialized vocabulary for discussing them as 'mission' (nor were there words for conversion, missionary spirit, or missionary field), and the premodern tradition never produced missiological literature as such. 'Mission' never figured in the systematic lists of practices, virtues, or spiritual attainments so carefully articulated by Buddhist around the world" (ibid., p. 6078).
8. Among the motives underlying the spread of the dispensation "One was certainly a willingness to share the *dharma*, which has characterized the whole tradition. In the earliest Buddha biographies the Brahmanical God implores a Buddha who is not inclined to preach that he nevertheless do so 'for the good of many folk,' echoing the precise language the Buddha uses later in these same texts to dismiss the first sixty saints. The underlying virtue that motivates the Buddha to assent to preach is compassion (*karuṇā*), one of the four 'godly states' (*brahmavihāra*) that constitutes buddhahood. Compassion is also singled out in the 'great commission' passage as the reason monks should bother to preach while wandering about, and in the Aśoka legends compassion motivates the patriarch and his associates who established the dispensation abroad. Unlike missionary spirit or the desire to convert others, such compassion for others' suffering figures prominently in lists of virtues and accomplishments across the Buddhist tradition. In texts about the establishment of the dispensation, the corresponding emotion, on the part of the recipient, is pleasure (*pasāda*); in Buddhist hagiography such feelings of pleasure in Buddhist contexts prove ultimately salvific, whether in this or

future lives. One of the few technical terms developed by early Buddhists that could correspond to *missionary* was *pasādaka*, or 'pleaser,' signaling the importance of generating this emotion on the part of those who would transmit the *dharma*" (ibid., p. 6079). It must be remembered though that "in the late twentieth century Buddhist missionaries in the West even developed formal conversion ceremonies to match the expectations of converts there" (ibid., p. 6081).

9. Ibid., p. 6079.
10. The now late Willard G. Oxtoby.
11. See Sharma (1998, pp. 5–6).
12. Walters (2005, p. 6077).
13. Ibid. It is also worth noting that (ibid.): "According to later reckonings this occurred just after the concluding ceremony (Pali, *pavārana*) of the first-ever Buddhist rains retreat (Pali, *vassa*), which for subsequent monastic and lay Buddhists became an annual time of renewal and recommitment."
14. Rahula, op. cit., p. xvi.
15. Stendahl (1993, p. 3).
16. Oxtoby, op. cit., pp. 61–62.
17. Ibid., p. 45.
18. Ibid., p. 66. He then proceeds to make seven points in this regard (ibid., pp. 66–68).
19. Ayoub (1996, p. 354).
20. Even questioning this provision could have dire consequences. In Sudan "a leader of the Muslim Republican Brotherhood demanded repeal of the apostasy law as a distortion of Islam. He was publicly executed as a heretic in January 1985; his property was confiscated, and he was prohibited burial at a Muslim graveyard," Shelton and Kiss (1996, p. 580, note 53). Many Muslims however have also urged the revision of this provision.
21. Morsink (1999, pp. 24–26).
22. Radhakrishnan (1993 [1927], pp. 28–29). Max L. Stackhouse notes that *Caste in Modern India* (Bombay, India, 1962) by M.N. Srinivas is "a classic study of how a 'nonmissiological' religion expands by incorporation of primal communities and redefines their social rights, duties, and statuses" (2005, Vol. 9, p. 6076).
23. Mahadevan (1971 [1956], p. 20).
24. Ibid.
25. Segal (2002, pp. 41–42), emphasis added.
26. Ibid., p. 17.
27. Ibid., p. 80.
28. Ching (2002, pp. 376–82).
29. Graham (1967, pp. 383–84).
30. Ibid., p. 384.
31. Eichhorn (1967, p. 401).
32. Ibid.
33. Glendon (2001, p. 155).
34. Ibid., emphasis supplied.
35. See Little, Kelsay, and Sachedina (1988).
36. Stackhouse, op. cit., p. 6086, emphasis supplied.
37. Ibid., pp. 6072–73.
38. Ibid., p. 6073.
39. Ibid., p. 6074.
40. Walters (2005, p. 6078).
41. Ibid.
42. Neill (2005, p. 6083).
43. Ibid., p. 6085.
44. Jones (2005, p. 1970).

45. Ibid.
46. Ibid., p. 6085.
47. Ibid., p. 6085, emphasis supplied.
48. Ibid., p. 6082.
49. Stackhouse, op. cit., p. 6074.
50. Ibid., p. 6075. Stephen C. Neill is inclined to take a benign view of this encounter unlike Samuel P. Huntington, whose famous thesis of clash of civilizations is too well-known to require elaboration. See Huntington (1996). For a response see Herzog (1999).
51. Cited in de Bary et al., ed. (1958, p. 578).
52. Ibid., pp. 578–79.
53. “But the notion that the Jewish people have a right to their traditional identity, as an enduring witness of God’s covenants, and are no longer proper targets for conversion to Christianity, has gained support in far wider circles. This recognition, along with the present-day dialogue efforts, illustrates the fact that Christian attitudes toward the Jews are undergoing significant change in recent times” (Oxtoby 1983, p. 46).
54. Oxtoby (2002b, p. 498).
55. See Morgan (1970, pp. 582–87).
56. Cohn (2006).
57. Ibid., p. 125.
58. Ibid.
59. Brownlie (1992, p. 25).
60. Oxtoby (2002a, p. 450).
61. Radhakrishnan, op. cit., p. 37.
62. Viswanathan (2003, p. 41).

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Chapter 11
Religions: Eastern and Western—Towards an Asian Understanding of Religion

I

The second part of this book, to which this chapter belongs, has been devoted to examining the issue of religious freedom through the lens of World Religions and Comparative Religion, just as the first part was devoted to examining the concepts of "religion" and "religious freedom" per se from various angles. Therefore the first chapter of the second part provided an overview, from the perspective of World Religions, of the concepts of "religion" and "religious freedom". The second chapter of the second part also kept the focus firmly on World Religions, as anticipations of religious freedom in them were adumbrated. The third chapter of the second part also retained this focus, as the various views on conversion found in the World Religions were presented.

The study of World Religions in this sense is aggregative in nature, but sometimes the study of religion also disaggregates the religions of the world into groups or classes. Our study of conversion in the Worlds Religion naturally segued into one such time-honoured classification of the World Religions into Missionary and Non-Missionary Religions.

This chapter carries the process further and analyzes the issue of religious freedom in the light of another classification of the religions of the world which has stood the test of time. This is the division of the religions of the world into Eastern Religions and Western Religions.

This classification was employed as an organising principle by Professor Willard Oxtoby (1933–2003) of the University of Toronto, for his two volumes on World Religions, published by the Oxford University Press in Toronto,[1] in 1996 and then reissued in 2002. But this is only a recent example of the use of this classification. It provided the template for the internal arrangement of the book on World Religions by R.C. Zaehner (1913–1974) as early as 1959, when it appeared under the title: *The Concise Encyclopedia of Living Faiths*.[2] This classification is thus of distinguished lineage, and goes back even to Rudolf Otto (1869–1937).

This classification of the religions of the world into Eastern and Western, like their previous classification into Missionary and Non-Missionary religions, has a contrastive element to it. One point of this contrast pertains to their different

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understandings of religion and the nature of religious allegiance in Eastern and Western religion. Spokespersons of Eastern religions have sometimes tended to react with dissatisfaction with Western conceptions of religion and religious allegiance. As my argument is built primarily around Asia, I have preferred the word Asian over Eastern in the rest of the chapter.

As the case for an Asian understanding of religion will ultimately involve a dissatisfaction with the way the word "religion" is applied (in an Asian context), it might be helpful to build towards it by surveying some other expressions of dissatisfaction with the word "religion". At least four scholars have raised questions in this manner either directly or indirectly: Wilfred Cantwell Smith,[3] S.N Balagangadhar,[4] Tomoko Masuzawa,[5] and Arvind-Pal S. Mandair.[6]

I share a sense of dissatisfaction with the term with these scholars, but the reason underlying my dissatisfaction is distinct, though not unconnected, to the work of these scholars. It might therefore be useful to review their causes of dissatisfaction with the term briefly, even at the risk of some repetition, before offering my own reasons of discontent with it.

W.C. Smith argued that the idea of religion as something false or true is a product of the Enlightenment, the period during which the various religions got labelled with the names they now bear (with the exception of Islam). His view, which I restate, has already been alluded to, namely that "It is a surprisingly modern aberration for anyone to think that Christianity is true or that Islam is—since the Enlightenment, basically, when Europe began to postulate religions as intellectualistic systems, patterns of doctrine, so that they could for the first time be labelled 'Christianity' and 'Buddhism' and could be true or false."[7] This involved the reification of the word religion, or of making a process into a thing, and then into mutually exclusive things. The religious life of humanity was and is a dynamic process and the issue of conflicting truth claims is the outcome of illicit reification. Smith even proposed that the word religion be abandoned, and be replaced by "cumulative tradition" on the one hand, to cover the collective historical and cultural dimension of it, and by "faith" to cover the individual's relation to the transcendent.[8] It is no more appropriate to ask whether a religion is true, than to ask whether a civilization or culture is true. The founding of the religions represented points of religious inspiration in the history of the world around which the "religions" coalesced, often in questionable or at least optional relation to that original point and within given historical and cultural frameworks, which now need to be transcended through this new perspective, which focuses on the entire religious history of humanity as a continuum.

S.N. Balagangadhar argues for the subtle way in which the recent concept of religion, which seems to be objective, is really a Western subjective concept. He writes in a well-known passage:

> In the name of science and ethnology, the biblical themes have become our regular stock-in-trade: that God gave religion to humankind has become a cultural universal in the guise that all cultures have a religion; the theme that God gave one religion to humanity has taken the form and belief that all religions have something in common; that God implanted a sense of divinity is now a secular truth in the form of an anthropological, specifically human ability to have a religious experience. . . . One has become a Christian precisely to the degree

> Christianity ceases being specifically Christian in the process of its secularization. We may not have had our baptisms or recognize Jesus as our saviour: but this is how we prosecute the Christians. The retribution for this is also in proportion: the pagans themselves do not know how pagan they really are. We have, it is true, no need to specifically Christian doctrines. But then, that is because all our dogmas are in fact Christian.[9]

Tomoko Masuzawa argues how the concept of "world religions" has emerged in the context of the use of the Western word "religion". Here again the focus is on the West, but in a way different from that envisaged by Smith or Balagangadhar in relation to the word religion. Masuzawa emphasizes the point that "when religion came to be identified as such" in the West (a point addressed by Smith), it also "came to be recognized above all as something that, in the opinion of many self-consciously modern Europeans, was in the process of disappearing from their midst".[10] This set up a contrast between a modern Europe, which was turning its back to religion, and the non-Europeans who were obsessed with it, and the category of world religions allowed modern Europe to distance itself from such obsession and "to do the vital work of churning the stuff of Europe's ever-expanding epistemic domain and of forging from that ferment an enormous apparition: the essential identity of the West".[11]

Arvind-Pal Mandair documents the role of the Western world in shaping Sikh identity.

> Each chapter in this book has, in different ways, engaged with and provided an extended critique of the concept of religion as a cultural universal. Through a case study of Sikhism, I have tried to demonstrate how certain aspects of Sikh and Hindu traditions were reinvented in terms of the category of "religion" during the late nineteenth and early twentieth centuries. As scholars working in different disciplines have increasingly recognized, the context of India's colonial encounter with the West provides fertile ground for the emergence and crystallization of concepts and categories that inform—but at the same time test the limitations of—the contemporary intellectual and political environment. Rather than looking at the process of intellectual encounter between India and the West in isolation from Europe, I have sought to shift the focus of this encounter closer to the political history of ideas that mutually shaped European and Indian modernities. This shift in focus has been achieved by grounding the critique of religion in a series of empirical and theoretical studies of translation. The aim of this approach was twofold: on the one hand, to highlight the operations of translation that were pivotal to the reformulation of Sikh and Hindu traditions in terms of religious identity, and on the other hand, and in the very same process, to recover part of Europe's repressed colonial memory, a memory that is organized around a certain translatability between religion and secularism.[12]

II

My reasons for dissatisfaction with the world religion are not based primarily on questioning it within the Western cultural matrix, as with Smith; or with it being lodged in the Western matrix, as with Balgangadhar; or with it serving as the womb for world religions, as with Tomoko Masuzawa; or focused that closely on the Indic context, as with Mandair. Echoes of these positions can be heard in my argument, but my argument is based on identifying the contours of an Asian concept of religion.

In this respect the key element to keep in mind is the manner in which the membership of a religious community is envisaged within the Western or Abrahamic religions and the Asian religions. In the case of the Western religions—namely those of Judaism, Christianity, and Islam—such membership is exclusive. To put it baldly—one cannot be a Jew, a Christian, and a Muslim at the same time, despite the fact that all three religions belong to the prophetic tradition and believe in the same one God. This does not necessarily mean that the religion's soteriology, like its sociology, is also necessarily exclusive; for while it is true that mainstream Christianity and Islam would also reserve salvation for their own followers only, this is not the case with Judaism, which not only acknowledges the "righteous" gentile but also admits his or her right to heaven.

Asian religions, on the other hand, though not free of exclusivistic elements, *also* provide for multiple religious identity, as expressed in multiple religious participation and affiliation. In the case of India, the interaction of this kind between the four religions of Indian origin—Hinduism, Buddhism, Jainism, and Sikhism—which represent its *cāturdharmya* tradition so to say—is fairly well known even in modern times. The expression, even in modern times, is used advisedly, as the British Census operations tended to reify these traditions into separate entities. The effect of these operations is, for instance, clear in the case of Buddhism. While in India people often identify themselves as followers of Hinduism or Buddhism, and sometimes even get into fights over it, just across the border, in Nepal, the situation seems to be quite different. Significantly, Nepal remained outside the purview of the British Census.

In the year 2004, Princeton University Press published an English translation of a book on Hinduism by the German scholar Axel Michaels, under the title *Hinduism: Past and Present*. Therein Axel Michaels reports:

> A Nepali, asked if he was a Hindu or a Buddhist, answered: "Yes." All these answers may be imagined with a typical Indian gesture: the head slightly bent and softly titled, the eyelids shut, the mouth smiling.[13]

Apparently this experience made quite an impression on the German scholar because he alludes to it again, at the end of the following passage:

> Therefore, the views of "there is only one god" and "all gods are one" are not so far from one another in the Hindu religions as has often been held. "Thou shalt not make unto thee any graven image" (Exodus 20:4) can also lead to the conclusion: Thou shalt not make only a single graven image. Hence, there is not *one* single word for god in Sanskrit, but many: *īśa/īśvara* ("ruler"), *bhagavat* ("elevated"), *prabhu* ("mighty"), *deva* ("god"), among others; the poet-saint Kabīr uses eighty-six terms for "god"...
>
> The consequences of this notion of god are tangible in popular religiosity all over. To use an example I have already cited (Chapter 1), if a Newar in Nepal is asked if he is a Hindu or a Buddhist, he might simply answer "yes". To restrict oneself to one position, one god, would be a stingy perspective of divinity for him. He can worship both Buddha and Śiva without getting into a conflict of belief.[14]

Claims for an exclusive Jain identity are now being made but before Mahatma Gandhi left for England in 1888,[15] he had to take vows to abjure meat, wine, and

women, while there, at the insistence of his mother before he left. These vows were administered to him by a Jaina monk.[16] Sikhism has moved farthest among the Indic religions in asserting an exclusive identity but even the British Census provided for a category of Sikh-Hindu during two phases of census operations in the Punjab, as Professor Hugh McCleod has pointed out.[17]

There thus seems to be a firm evidentiary base for stating that religious identity in terms of Indic religions is not *necessarily* exclusive, and the statement might be even more broadly applicable to pre-British India.

Pre-communist China seems to reflect a similar religious reality. My Chinese colleague cautioned me, during my student days, against imagining that Confucianism, Taoism, and Chinese Buddhism represented watertight compartments requiring exclusive affiliation. One reads of a tradition in Ming China that when wayfarers would meet in a tavern, one would ask the other: which of the three traditions do you favour? The person who asked the question would then sing a short hymn in praise of the other person's favoured religion. Then the other person would ask the same question of the original interlocutor and respond in a similar way. The account is perhaps apocryphal and an idealization of the harmonious relationship among the Three Teachings but it is significant that it exists. A.C. Graham explains:

> We must distinguish between the customary codes which the majority of a people, or class within a people, accept in practice, and the international religions which in certain civilizations influence, without permeating, these codes. In China this distinction is much more striking than in Europe, where the true nature of the beliefs on which a man acts may be hidden from him by the Christianity which overlays them. What is called in the West "Confucianism" is not a religion, but the traditional view of life and code of manners of the Chinese gentry for two thousand years up to the Revolution of 1911. Confucius is not the founder of a religion, nor was he a philosopher, he was a gentleman whose sense of what is done and what is not done has been taken as standard ever since. The Chinese who ask deeper questions about how to behave as a filial son or as a loyal minister, and who require a mystical philosophy of a religion, turn to Taoism or Buddhism. This does not mean that they cease to be "Confucians"; unless they retire from the world, they continue to direct their public lives as "Confucians" and their private life as Taoists or Buddhists. This condition will seem surprising if one imagines that it is like being a Christian and a Muslim at the same time; but it is much more like being both a Christian and a gentleman.[18]

The situation in China is discussed by Julia Ching in more detail, who points out "that an important difference between East Asian religious life. . . and the West is that its various communities are not completely separate."[19] She goes on to say: "At issue is the inseparability of religion and culture in East Asia, as well as the syncretism or combination that characterizes all the major religions there."[20] She states finally:

> We should make our position clear. There is ground for confusion, we grant, because of the close ties between religion and culture. It is not easy to separate religion and culture in our discussions. This does not mean, however, that the East Asian civilizations are superstitious. But others in the same culture see them as practical means of securing benefit in life. We should be aware that definitions of these traditions in the region are fluid, compared with the roles of religions of West Asian origin, like Christianity or Islam. Moreover, we think that the word "religion" need not be defined in exclusivist terms, in theistic terms, or even in doctrinal terms.[21]

We have talked about the evidence from pre-British India and from pre-Communist China. But the evidence from *contemporary* Japan in this respect is even stronger.

The most dramatic illustration of multiple, or at least dual, religious affiliation comes from Japan. Its religious census appears as follows for the year 1985:

Buddhist	92,000,000 persons	76% of population
Shinto	115,000,000 persons	95% of population
Christian	1,000,000	
New religions	14,000,000	
Total	*223,000,000*	

The total population of Japan in 1985 was 121,000,000.[22]

Thus while Western religions presuppose exclusive religious identity, Asian religions are open to multiple religious identity. It is worth noting in this context that many people in the West these days *nominally* belong to one religion or denomination but *functionally* freely engage other religious traditions as well.

What we have discovered in the course of this intellectual excursion is that some general differences can be posited between Asian and Western religions. Three such points of difference stand out in clear relief:

(1) That Asian religions tend to resist characterization either as "religion" or "philosophy" in the Western sense;
(2) That the various "religious communities" in Asia are not as exclusive in relation to each other as in the West; and
(3) Religion and culture are not as easily separable in an Asian context as in the Western.

These three features are probably interconnected, while having their own distinct implications for religious freedom. In the rest of this chapter I shall focus on the second of these features.

III

The reason why we cannot go on using the world religion with impunity is that its use in the Western *and* Asian context generates *two different concepts* of religious freedom. One may begin by asking what implication does this fact, that the Asian concept of religion does not necessarily involve exclusive religious identity, possess for the concept of religious freedom in the modern world?

The concept of religious freedom, current in contemporary discourse, is enshrined in Article 18 of the Universal Declaration of Human Rights, which was adopted by the United Nations on December 10, 1948. It has been further elaborated in successor UN documents such as the International Covenant on Civil and

Political Rights (1966) but it remains the bedrock provision in modern discourse. This provision is cited again for convenience.

Universal Declaration of Human Rights (1948)

Article 18

> Everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to change his religion or belief, and freedom, either alone or in community with others in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[23]

One needs to focus on the clause in it which says: "This right includes the freedom to change his religion or belief". This clause was inserted at the instance of Charles Malik, a Greek Orthodox Arab[24] and turned out to be controversial from the very beginning.[25] Interestingly, Article 18 does not imply a secular state.[26] Nevertheless, the point to note is how Article 18 sits uneasily with other religions, perhaps because it bears not merely the imprint of Abrahamic religions but more specifically of the Christian West, as even Islam had difficulty with it.[27]

Nor was Islam's opposition inconsequential. Article 18 of the U.N. Declaration appears as follows in the International Covenant on Civil and Political Rights (1966). Part of the provision is also cited again for convenience.

> Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion of belief in worship, observance, practice and teaching.[28]

It will be noticed that the right to *change* one's religion, as found in Article 18 of the Universal Declaration of Human Rights, does *not* appear as such in the International Covenant on Civil and Political Rights (1966). The corresponding expression takes the form of the right to *adopt* a religion.

The subtle nature of the change should not conceal its significance. Some Islamic nations had actually abstained from endorsing the Universal Declaration of Human Rights because Islam does not permit one to "change" one's religion. Such a change is punishable by death according to the *sharī'ah*. Hence, in order to accommodate the objection, the word "change" was dropped in the Covenant and replaced by the word "adopt".[29]

What is precisely involved in the right to freedom to change one's religion appearing as the right to "have or adopt a religion"? It needs to be noted that the expression "to change" is stronger in connotation, as implying a break with the previous religion one was following, than the expression "to have or adopt". The change is maintained in subsequent documents. Thus the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion (1981) reads:

> Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have a religion or whatever belief of his choice or freedom.[30]

IV

The question which now needs to be posed is this: if Islam could thus influence the discourse on religious freedom from its own perspective, of what religion or *dīn* means, then how would the incorporation of the Asian concept of religion precisely alter the contours of the discourse on religious freedom?

In order to answer this question we have to remind ourselves that religion and philosophy are not so divorced in Asia as in the West, nor is exclusive membership of one religion a necessary marker of religious identity. It will help us move closer to an answer if we also took into account an additional point, that although the existing Article 18 seemed to be based on a Western concept of religion, two of its elements which we have identified with its concept of religious freedom, namely (1) the freedom to change one's religion as the core of freedom and (2) exclusive religious identity, as the core of its concept of religion, are *not* absent from religious practice in Asia. For instance, not *all* followers of Shinto identified themselves as followers of Buddhism though most did and it is certainly possible for one to join a Zen monastery in Japan and pursue an exclusively Buddhist lifestyle. These elements are thus present, but they are present within a larger religious system which also allows for multiple religious identity and does not always insist on the rejection of one identity as a condition for accepting the other; the mere renunciation of it, temporary or permanent suffices.

The presence of both these elements—of the right to change and the right to exclusivity are also honoured within the Hindu religious tradition but seem to assume a different character therein on account of its pluralism. It is impossible to overemphasize this point. Thus it is well-known that the choice of one's god is the birthright of every Hindu. It should be noted that the area where religious freedom is being exercised here is not religion, because access to religions is open; the area of is that of god, because one enjoys a unique and special relationship to one's god and must therefore choose the god oneself.

As Thomas J. Hopkins notes regarding a Hindu family:

> If you know a family… the mother, a widow, is a devout worshipper of Śiva; her sister-in-law, equally devout, follows the teachings of Rāmakrishna; the eldest son is an engineer trained in England, a worshipper of Śiva but not as knowledgeable or dedicated—at least not yet—as his mother and younger brother; his wife's father worships Krishna, as does all her family.[31]

Nor is this all:

> The family worships Śiva in the house; they go to the temple of Cāmunda or Durgā for special occasions; they visit a temple and teaching center dedicated to Vishnu; they sing devotional songs to Krishna. There are ties to all these, family tradition that connect them and personal preferences that make each family member unique. Another family would have a different pattern; a third would have yet another.[32]

Thus what is the vital issue at the level of religion, on account of the West's concept of religion, works out at the level of deities or gods in Hinduism. Again, because of the difference in the nature of the concept of religion, the *exclusivity* of

the Western system takes the form of *esotericism* in Hinduism. One may become the exclusive member of a denomination (*sampradāya*) by being initiated into it. Hence the Hindu concept of the *iṣṭa-devatā* or chosen deity, is the analogue to the Western concept of choosing a religion by changing to it. The weight of the point falls on *religion* in the West and on God in India. The Hindu concept of *dīkṣā*, which involves exclusive belonging to a denomination, is the analogue to the Western concept of exclusive religious affiliation. Once again, the weight of the point falls on *religion* in the West and on denomination in Hinduism.

V

It has taken India centuries to evolve a civilizational ethos of religious tolerance, which even provides for exclusivistic positions (*ekāntika*) but within a framework of pluralist options. That whole ethos will be undermined by a slavish implementation of Article 18 as it stands today, for then to choose another tradition will be to change tradition.[33] It had taken China presumably centuries for the Chung Yung or the Doctrine of the Mean to become part and parcel of Chinese culture, to allow it to create the civilizational space for the San Chiao or the Three Teachings to flourish. A.C. Graham explains, in the words cited below, the significance of this Doctrine of the Mean. His concluding words are specially noteworthy, when he cites Arthur Waley on this point:

> In its emphasis on the mean, as in much else, Confucianism reminds one less of moral teachings of the world religions than of secular modalities such as Aristototle's, and of modern liberalism. According to Confucius (*Analects*, xi.15) "to exceed is as bad as not to reach", and the word for "excess" is also the ordinary Chinese word for "error" in general. Confucius often reminded his disciples of the narrow margin which separates virtues from certain vices, of how courage can easily pass over into turbulence, wisdom into cunning, uprightness into harshness. As Arthur Waley has noticed (*Analects*, p. 37) one of the most striking achievements of Confucianism was to give the idea of moderation an emotional force which did not spend itself over two thousand years, while European liberalism has never succeeded in giving it a drive equal to the fascination of extremes.[34]

VI

How the Western definition of religion, as involving *exclusive* allegiance to one religion, has tended to affect the religious landscape of Asia has largely gone unnoticed by scholars, on amount of the uncritical acceptance of the axiomatic understanding that this is the only valid way of defining and understanding religion. The way this perspective slipped in virtually undetected during the census operations in India was documented earlier. This perspective was even strong enough to influence the world of architecture and thus affect the religious landscape of Asia almost literally. Consider, for instance, our contemporary reaction to three major monuments of South and Southeast Asia: Bodh Gaya in Eastern India, Borobudur in Central Java, and the Angkor complex in Cambodia, first two of which we would

automatically describe as Buddhist and the last one as Hindu. Himanshu Prabha Ray has demonstrated[35] how all these identifications are the product of a Western colonial intervention in archaeology, making it "evident that a primary concern of colonial powers was not only the safeguarding of the colony's heritage, but, more significantly, also the subordination of an indigenous interpretation of the world to European perceptions—an agenda pursued not only in South Asia, but in Southeast Asia as well."[36] The indigenous interpretation in all the three contexts viewed the site as a centre of multiple religious significance, while the European perception could only provide for exclusive affiliation. Thus, in the case of Bodh Gaya, the Mahabodhi temple was Buddhicized despite the fact that the sister-in-law of the Hindu ruler, Agnimitra, is listed as a donor in the first century BCE, and, in the seventh century, Xuanzang refers to the "construction of a temple by a Brahmin 'in compliance with the instructions of Mahadeva conveyed in a dream' and the placement of the image of the ascetic Buddha inside it."[37] The reconstruction of Borobudur in line with the doctrine of 'anastylosis' (which literally means the re-erection of columns), provides an even more glaring example of this process:

> While the monument at Borobudur was restored close to its original form, except perhaps the pinnacle, the landscape around the site had changed considerably as a result of the conservations work. A number of Hindu and Buddhist shrines were located within 3 sq. kms of the confluence of the rivers Elo and Praga, but while the Buddhist structures are relatively well-preserved, *the Hindu temples have disappeared*. The reason for the longevity of Borobudur lies perhaps in the fact that it did not ever lose its position within Javanese cultural memory, and visitors continued to go to the monument. Chinese ceramics and coins dating from the eleventh to the fifteenth centuries have been found at the site, and a fourteenth-century Javanese poem indicates that pilgrims continued to visit the shrine. By the 1850s, nearly four decades after Borobudur had been reclaimed from the jungle, the Javanese were again performing rituals at the shrine; especially when crowds of people, both Chinese and Javanese, assembled at the site. The most popular image was that on the first terrace, referred to as Kakek (grand-father) Bima or Bhima of the Sanskrit epic *Mahabharata*, and worshipped for boons. This record of a continued cultural dialogue between the community and the monument was an aspect of life in pre-colonial Asia evident in the next case study as well.[38]

The third example, from Angkor Wat, points to a similar reality. This great Khmer monument of the thirteenth century is dedicated to Viṣṇṇu but a "study of the religious architecture ... indicates that a shrine to the Buddha did not differ markedly from one to Visnu or to Siva, a good example of which is Bat Chum, inaugurated in AD 955, where the Buddhist settlement followed the same architectural pattern as that of others dedicated to Siva or Visnu."[39] But Angkor was subsequently Hinduized. Himanshu Prabha Ray cites Penny Edwards to establish this as follows:

> The presence of Buddhist statues and the practice of Buddhist worship at Angkor presented unwelcome challenges to colonial desires to compartmentalise Cambodia both vertically, through time and horizontally, through categorisation of religion. On site, the Hindu framing of Cambodia encouraged Angkor's new guardians not only to relocate members of the Cambodian monkhood or sangha, but also to remove Buddhist statues that had been erected in positions of central prominence and sacred significance during the temple's centuries-long conversion to a site of Buddhist worship. During the following decade, colonial attempts to re-Indianise Angkor would see the quarantining of scores of such Buddhist

> icons in a designated space, which became known as Mille Bouddha (thousand Buddha) gallery. Those monks, who had been the chief curators of the temple complex long before the EFEO was founded, were also cleared off the land in 1909 as their presence in front of the temple was considered an eyesore.[40]

VII

One scholar who has paid critical and sustained attention to the contrast entailed between exclusive religious identity and multiple religious identity, under the name of multiple religious belonging, is Peter C. Phan,[41] who articulates the point, to which attention has been drawn repeatedly in this book, as follows:

> Multiple religious belonging emerges as a theological problem only in religions that demand an absolute and exclusive commitment on the part of their adherents to their founders and/or faiths. This seems to be the case with the so-called religions of the Book, namely, Judaism, Christianity, and Islam. These three religions consider themselves not only mutually incompatible but also irreconcilable with any other religion whatsoever, so that "conversion" to any one of them is often celebrated with an external ritual signalling a total abjuration of all previous religious allegiances.[42]

He goes on to say, even more remarkably:

> Not so with most other religions, particularly in Asia. In Asian countries such as China, Japan, Korea, Vietnam, India, Nepal, and Sri Lanka, multiple religious belonging is the rule rather than the exception, at least on the popular level. Indeed, the very expression multiple religious belonging as understood in the West, that is, as two or more memberships in particular systems of beliefs and practices within bounded communities, is a misnomer in Asia, where religions are considered not as mutually exclusive religious organizations but as having specialized functions responding, according to a division of labor as it were, to the different needs and circumstances in the course of a person's life. Such is the case, for instance, with Shinto and Buddhism in Japan. Thus Asian people may well go to pray and worship in pagodas, temples and shrines, without much consideration to what religions these sacred places belong, but depending on whether the local deity or spirit is reputed to grant a favor tailored to one's particular needs and circumstances. Furthermore, at times a religion that is not by nature exclusive becomes so in reaction to the claims of superiority made by Christianity, as happened to Buddhism in Sri Lanka in the nineteenth century, and then the relationship between the two religions becomes one of competition rather than peaceful coexistence.[43]

It should be carefully noted that this does not mean the *exclusivistic elements* are not found at all in Asian religions. We have cited Japan as an example from Asia par excellence of multiple religious belonging,[44] but

> This does not mean that in Japan there has been no religious movement with exclusivist claims. For example, as Van Bragt notes, the school of Nichiren (1222–82) insists on the sole worship of the perennial Buddha Sakyamuni, as embodied in the *Lotus Sutra*, and on the sole practice of the *daikimu*, that is, the recitation of the title of the *Lotus Sutra*, "Namu myoho renge kyo," while the True Pure Land school of Shinran (1173–1262) chooses the Buddha Amida as the exclusive object of worship and reliance and advocates the numbutsu, that is, the recitation of Amida's name (Namu Amida Butsu) as the only practice leading to salvation.[45]

What it does mean is that such exclusivistic claims are made within a larger context imbued with multiple religious belonging, which can honour such exclusivity as an expression of religious freedom within it. Nor does it mean that multiple religious belonging is not found at all in Western Religions. The position of the Unitarian-Universal Church in the U.S.A., for example, is not uncongenial to multiple religious belonging. But in this case it exists within a larger context in which exclusive religious affiliation is the norm. There is all the difference in the world between a Communist party functioning within a democracy, as in the United States, and a democratic party functioning under a Communist regime, such as the former U.S.S.R. if indeed it is allowed to.

It may also be worth noting, in keeping with the spirit of the previous section, that some exclusivist elements in Asian religions may have emerged in response, or in imitation of, the exclusivist Christian model. Elisabeth Harris notes in the context of Buddhism and Christianity in Sri Lanka that

> Protestant missionaries to Sri Lanka in the nineteenth century found that dual religious belonging posed no problem to the native Buddhists, for whom "being half Christian and half Buddhist is far better than being either decidedly Christian or Buddhist." It was only after Buddhism was attacked by Protestant missionaries as nihilistic atheism and as a false religion that Sri Lankan Buddhists decreed that one could not be Buddhist and Christian at the same time. This Buddhist Revival became known as "Protestant Buddhism" because it was a protest against Christianity and appropriated from Protestant Christianity several of its forms and practices, in particular its claim of superiority and exclusivism: "Buddhism was pictured by later revivalists as irretrievably different from Christianity and irrevocably superior to it because of its non-theistic nature, its compatibility with science, its rationality, its optimism, and its ethics, each assertion being a direct challenge to one of the accusations made by the missionaries.[46]

What is being described here as multiple religious identity or belonging needs to be carefully distinguished from such allied phenomena as (1) inculturation, (2) dialogue, (3) New Age syncretism and (4) conversion.

Inculturation involves an idea of accepting a religion, specially Christianity, without having to abandon one's cultural traditions. Its seed idea consists of the recognition that "a person need not and must not renounce his or her cultural identity and traditions upon becoming and Christian,"[47] so that to be a Christian does not necessarily mean being "Western".

Dialogue, or more properly, interreligious dialogue differs from multiple religious belonging as it is predicated on retaining identities during dialogue. It could even be argued that it "militates against multiple religious belonging because it requires as a matter of methodology that participants in interreligious or interfaith dialogue preserve their distinctive religious doctrines and practices and show how they are not only similar to but different from those of other religions."[48]

New Age syncretism can be genuine and anticipate multiple religious belonging if rooted in genuine spiritual search but with consumerism and globalization now rampant in the spiritual sphere, one needs to be cautious here, specially if it happens to represent what has been described as "believing without belonging" (Grace Davie), "nebulous esoteric mysticism" (François Champion) and "Nietzschean neo-paganism" (Claude Geffre).[49]

Multiple religious belonging is also different from conversion not only because the concept of conversion often implies an exclusive religious identity but also because it is a response to a *different* question, as Catherine Cornille implies when she says: "A heightened and widespread consciousness of religious pluralism has presently left the religious person with the choice of not only *which* religion, but also *how many* religions she or he might belong to. More and more individual confess to being partly Jewish and partly Buddhist, or partly Christian and partly Hindu, or fully Christian and fully Buddhist."[50] In any case, if the proselyte continued to retain one's previous identity, then it would be hard to reconcile this with one's conversion to another religion. But the fact is that often the religions of Asia do not insist on abandoning one's previous affiliation if one has been initiated into another. This serves to demonstrate that there is likely to be distinction, at least in flavour, between multiple religious belonging in a context in which the religions involved do not insist on exclusive religious identity (e.g. Hinduism, Jainism); the religions involved do (e.g. Judaism, Christianity, Islam); or where some do and some don't (Christianity, Hinduism). And although Peter C. Phan is inclined not to distinguish between "double belonging" and "multiple belonging," some kind of gradation among various kinds of multiple belongings could possibly be identified, although it is not attempted here. What is worth investigating further is: what has to happen for an exclusive religious tradition to become open to double or multiple belonging?

VIII

Peter C. Phan identifies the following conditions for this to happen in the case of Christianity, which may be used here as a test case:

(1) That Jesus is the unique and universal Savior does not exclude the possibility of non-Christians being saved.[51]
(2) Nor does this fact exclude the possibility of non-Christian religions functioning as "ways of salvation" insofar as they contain "elements of truth and grace."[52]
(3) These two possibilities are realized by the activities of both the logos and the Holy Spirit.[53]
(4) Religious pluralism, then, is not just a matter of fact but also a matter of principle.[54]
(5) This autonomy of non-Christian religions detracts nothing from either the role of Jesus as the unique and universal saviour or the Christian Church as the sacrament of Christ's salvation.[55]
(6) There is then a *reciprocal* relationship between Christianity and other religions. Not only are the non-Christian religions complemented by Christianity but Christianity is complemented by the other religions.[56]
(7) Furthermore, despite the fact that the Christian faith proclaims that Jesus Christ is the fullness of revelation and the unique and universal saviour, there is also a reciprocal relationship between him and other "saviour figures," and non-Christian religions, since Jesus' uniqueness is not absolute but relational.[57]

The final, the eighth point made by Peter Phan goes to the heart of the matter:

> From what has been said about the Christian claim that Jesus is the unique and universal savior and about the church as the sacrament of salvation, it is clear that the complementarity between them and other savior figures and religions, though complementary, is, to use, Dupuis' expression, "asymmetrical." This asymmetricality is required by the claim of the Christian faith that Jesus is the Logos made flesh and represents the climax or the decisive moment of God's dealings with humankind. What this asymmetricality intends to affirm is that according to the Christian faith, Jesus mediates God's gift of salvation to humanity in an overt, explicit, and fully visible way, which is now continued in Christianity, whereas other savior figures and religions, insofar as they mediate God's salvation to their followers, do so through the power of the Logos and the Spirit. In this sense Jesus may be said to be the "one mediator" and the other savior figures and non-Christian religions participating mediators or "participated mediations."[58]

IX

It is clear then, that Article 18 of the Universal Declaration of Human Rights should read as follows, if reframed in the light of foregoing discussion:

> Everyone has the right the freedom of thought, conscience and religion. This right includes the freedom to *choose* [not change] his religion or belief. . .

One can *choose* a religion without necessarily having to change one's religion, in a world characterized by multiple religious identity; whereas in a world characterized by exclusive religious identity such a choice must involve a change. Such was, and even now is not the case in many parts of the non-Western world. The new formulation provides room both for the Western context characterized by exclusive religious identity and for the Asian context characterized by multiple religious identity, and can therefore claim to be truly "universal".

The next question to be addressed is whether such a merely verbal accommodation would suffice to accommodate the position which has emerged in the foregoing discussion. Some reservations need to be voiced in this respect.

The first reservation is that verbal accommodation may not be sufficient in view of the structural framework within which these provisions exist. The point could be illustrated with the help of a general example which may not be morally salutary but is nevertheless useful. Let us consider the following statement as a normative general proposition: *one may marry anyone one wants*. This sounds like an unexceptional moral principle. However, let us see how different its implications are in a monogamous society and in a polygamous society. In a monogamous society, it would mean that one can choose only one partner at a time, and before one decided to have another partner, the present partner must be divorced. In a polygamous society, the principle "one may marry anyone one wants", the same rule, would allow one to marry more wives while others are present, and does not necessarily involve divorce. Has then human freedom been enhanced by applying this same principle—"one may marry anyone one wants"—in both the contexts equally? One could credibly argue that it has been diminished in the second example. The rule

was framed in a monogamous society, therefore it overlooked the fact that, to be more comprehensive, it should read: "one may marry anyone one wants, but must have only one partner at a time."

The point is that text out of context can backfire and the context can even overwhelm the text. It is well known by now how the free exercise clause of the American constitution has failed to protect the religious freedom of the American Indians "because the law has not shown the capacity to grasp and to accommodate the nature and significance of traditional Indian religions."[59] Here is an example:

> Contrary to the typical free exercise claim, which seeks exemption from some governmental action on religious grounds—e.g., the military draft or compulsory education or uniform clothing regulations or compulsory insurance of employees—these sacred sites cases seek to modify or to stop governmental actions involving the use and development of government land. Hence the relief sought in such cases is quite different from that sought in cases seeking individual compensation from a governmental act. Hence public land is at stake; that presents a categorically different situation from the typical case in which the freed exercise doctrine was developed.[60]

The Asian concept of religion similarly confronts us with a categorically different situation where the very concept of religion is different. Thus, a civilizational rather than a merely verbal accommodation may be required. One way of stating the point dramatically would be to say that when a follower of an Asian religion coverts to an Abrahamic religion, he or she does not merely convert to another religion, he or she also converts to another *concept* of religion itself, the exclusive one.

One could conclude with three propositions, which may be stated as follows:

(1) That the concept of religious freedom so often invoked in modern discourse, presupposes a certain concept of religion, a concept associated with Western religion and culture;
(2) That a different concept of religion, associated with Asian religion and culture, leads to a different concept of religious freedom; and
(3) Human rights discourse needs to harmonize these two concepts of religious freedom.

The relevant concept of religious freedom presupposes that an individual can only belong to or profess one religion at a time. Were this not the case, the idea underlying the Article, that religious freedom implies the right to change one's religion, would not make much sense. Freedom then boils down to the freedom to change.

It is important to note that the idea—that one may belong to only one religion at a time—is shared by both the religious as well as the secular traditions of the West. Some have argued—notably W.C. Smith—that religion as a reified entity is itself a modern Enlightenment idea. But the idea that one can belong to only one religion is part and parcel of both the religious legacy of the West—through the Abrahamic religions, and the secular legacy of the West—through the Enlightenment.

If one believes that one can only belong to one religion at a time, then it stands to reason that religious freedom would essentially consist of one's freedom to change such affiliation by the voluntary exercise of choice.

In large parts of Asia, however, one encounters a somewhat different notion of religion, namely, one of multiple religious affiliation. The question, whether one belonged to one religion or the other, may even possess a certain artificiality about it.

Thus in the Asian cultural context, freedom of religion means that the person is left free to explore his or her religious life without having to change his or her religion. Such exploration need not be confined to any one religion, and may freely embrace the entire religious and philosophical heritage of humanity. When conversion was banned in Nepal, the rationale for such a policy was also couched in the rhetoric of religious freedom—that religious freedom means each religion being left to grow and develop on its own, without interference from other religions. Interestingly, even Islamic Indonesia subscribes to such a concept of religious freedom, where seeking converts from any one of the five religions so acknowledged—Hinduism, Buddhism, Islam, Catholicism, and Protestantism—is forbidden. This model has its positive side in terms of preserving pluralism. It however still assumes a Western concept of religion and should be distinguished from the Eastern model which questions an exclusive concept of religion itself.

One can now advance to the third and final proposition. According to one concept of religion—herein called Western—freedom of religion consists of freedom to change one's religion when faced with a religious option. According to another concept of religion—herein called Asian—freedom of religion consists of not having the need to do so, when faced with such an option. The acceptance of this position requires a conceptual rather than a verbal accommodation. So is the Western discourse on religious freedom prepared to integrate the Asian perspective within it—that when it is not necessary to change, it is necessary not to change?

Notes

1. Oxtoby (1996a, 1996b).
2. Zaehner (1959).
3. See Smith (1963).
4. Balagangadhar (1994).
5. Masuzawa (2005).
6. Mandair (2009).
7. Smith (1967, p. 73).
8. Wilfred Cantwell Smith, *The Meaning and End of Religion,* passim.
9. Balagangadhar, op. cit., pp. 246–47.
10. Masuzawa, op. cit., p. 14.
11. Ibid., p. 20.
12. Mandair, op. cit., pp. 433–34.
13. Michaels (2004, p. 6).
14. Ibid., p. 319.
15. Payne (1969, p. 679).
16. Gandhi (1993, p. 39).
17. McLeod (2002, p. 87).

18. Graham (1967, p. 365).
19. Ching (2002, p. 318).
20. Ibid.
21. Ibid., p. 319.
22. Reader (1991, p. 6).
23. See Brownlie (1992, p. 25).
24. Glendon (2001, p. 125).
25. Glendon, op. cit., pp. 69–70. It is also worth noting that (ibid., p. 168): “In the end, the controversial religious-freedom article caused only one defection. All the states with large Muslim populations except Saudi Arabia voted yes when the whole draft Declaration was presented for approval by the third committee. The main speaker on the issue in the General Assemble was Muhammad Zafrulla Khan, the foreign minister of Pakistan and head of its UN delegation. A member of the minority Ahmadi Muslim sect, Kahn told the delegates the article on religious freedom would have the full support of Pakistan, then the UN member with the largest Muslim population. The issue, he said, “involved the honor of Islam.” He cited a passage from the Koran for the proposition that faith could not have an obligatory character: “Let him who chooses to believe, believe, and him who chooses to disbelieve, disbelieve.” Moreover, he pointed out, Islam was a proselytizing religion that strove to persuade others to change their faith and to alter their way of living. It recognized the same right of conversion for other religions, though it had objections to Christian missionary work when that work assumed a political character. The freedom to change beliefs, he concluded, was consistent with the Islamic religion.”
26. Ibid., p. 184.
27. Ibid., p. 154: “The Muslim delegates were also divided on Article 18’s freedom to change one’s religion. Though that right was arguable implicit in the general principle of religious freedom, Malik’s insistence that this be spelled out made the article controversial. Baroody was again the most outspoken critic. His delegation supported freedom of conscience and religion but objected to the right to change one’s religion because proselytization historically had caused so much bloodshed and warfare. Saudi Arabia’s vigorous opposition to the marriage and religion articles in the third committee foreshadowed that country’s abstention from the Declaration. A Muslim delegate from India, Mohammed Habib, took a different view, supporting the right to change one’s religion and pointing out that the new Indian Constitution guaranteed the right to convert or be converted. And Egypt’s Rafaat said that his delegation, though ‘not entirely’ in agreement with the right, would vote for the Declaration and that his country ‘intended to apply and execute it with all honesty’.”
28. *Twenty-Five Human Rights Documents* (New York, NY: Columbia University Pres, 1994), p. 21.
29. For an account of how this change came about and its implications, see Tahzib (1996, pp. 84–87). I am indebted to Professor Brian D. Lepard for this reference.
30. Brownlie, ed., op. cit., p. 110. I owe this information to Professor Daniel Cere.
31. Hopkins (1971, p. 1).
32. Ibid.
33. Radhakrishnan (1993 [1927], pp. 53–54).
34. Graham (1967, p. 383).
35. Ray (2008, pp. 417–49).
36. Ibid., p. 422.
37. Ibid., p. 434. Himanshu Prabha Ray provides detailed archaeological evidence subsequently (Ibid., pp. 436–37): “In addition, there are several examples of images from Bodh Gaya, including a relief dated AD 807 depicting Surya, Lakulisa and Visnu. Its inscription indicates the dedication of a *caumukha* Mahadeva icon within the boundaries of the temple complex for the benefit of the *snatakas*, who were the inhabitants of the Mahabodhi. Several other Saiva images found at the Mahabodhi temple complex survive, while others are worshipped as heroes, given the Vaisnava identity of present temples at Gaya. Today the Visnupad temple

forms the centre of ancestral rituals, though this was not the case earlier, when the modest Gayasiras shrine located just below the Visnupad was venerated as the most important on the route. Thus, it is evident that Bodh Gaya and Gaya formed a religious complex revered by several sections of society with diverse religious affiliations, and underwent both spatial and temporal changes. In the search for origins and chronology, the social history of religious architecture, or the constant changes that any religious structure underwent as a 'living' monument in Asia, was eliminated in the colonial period. This transformation of a shrine with a varied following into a relic is a practice that was to be repeated not only at other places of worship in South Asia, but, as we shall discuss below, at Borobudur and Angkor as well."

38. Ibid., pp. 439–40, emphasis added.
39. Ibid., p. 441.
40. Ibid., p. 443.
41. Phan (2004).
42. Ibid., p. 62.
43. Ibid., pp. 62–63.
44. This too is subject to a limitation identified by Van Bragt, who shows that "for most Japanese in history the allegiance to the Buddhist-Shinto conglomerate—and thus, in a sense, to both Buddhism and Shinto—did not have to be accompanied by a sense of multiple belonging. The composite religious system in which they were born and which served equally the legitimation of the political system and the social integration of the nation did not present them with a real choice entailing the rejecting of an alternative. If choice there was, it was rather in the sense of the possibility of different specializations on the basis of the acceptance of the system as a whole" (cited, Phan, op. cit., p. 63, note 7).
45. Ibid., p. 63.
46. Ibid., p. 63, note 8.
47. Ibid., p. 61.
48. Ibid.
49. Ibid.
50. Cited, ibid., pp. 61–62.
51. Ibid., p. 64.
52. Ibid.
53. Ibid., p. 65.
54. Ibid.
55. Ibid., p. 66.
56. Ibid.
57. Ibid., p. 66.
58. Ibid., p. 67.
59. Michaelson (1991, p. 128).
60. Ibid., pp. 126–29.

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Chapter 12
Religious Freedom and Proselytization: A Case Study of Christian Missions

It might be convenient to divide this chapter into two parts. The first part then could be devoted to examining the question: *Must Christianity missionize* (which is perhaps to be preferred over the stronger "proselytize")? And if, after the objections have been examined and the missionary enterprise on part of not just Christianity but any religion emerges as something defensible, then the second could be devoted to examining the question: *What would be the proper paradigm for pursuing Christian missionary activity today?*

PART ONE

I

I had a colleague by the name of Scotty McLennan in graduate school. He is now the Dean of Religious Life at Stanford University and published a book recently entitled: *Jesus was a Liberal: Reclaiming Christianity for All.* This is how it begins:

> A Hindu priest with whom I spent a college-era summer in India use to speak of avatars: people with clear mystical awareness who have direct knowledge of the infinite spirit that infuses the universe. In other words, they have true God-consciousness. Avatars, he said, help the rest of us see what God is like in human form. They are sons or daughters of God in a uniquely pure way.
>
> The priest's avatar was Ramakrishna, a nineteenth-century saint who inspired an order and mission in India that has come to be known in America as the Vedanta Society. At the end of the summer, when I expressed a strong interest in becoming a Hindu, the Hindu priest said no. Ramakrishna, he said, taught that avatars have had different impacts from culture to culture and era to era. Yet, ultimately—although they use different names and different religious methodologies—they all point to the same God. So Ramakrishna advised seekers not to look outside their own traditions, but to follow the path they know best with wholehearted devotion. Ramakrishna counseled, "A Christian should follow Christianity, a Muslim should follow Islam, and so on."
>
> The priest directed me back to the Christianity with which I had grown up. He insisted that Jesus was my avatar, not Ramakrishna nor the Buddha nor anyone else. It was in Jesus' footsteps that I should walk to know God better. . .[1]

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This attitude of the Hindu priest may now be compared to that of a Christian minister. What would the Christian minister do when approached by someone that he or she wanted to be a Christian? In all likelihood, such a person would be welcomed, not turned back to his or her own tradition. This stark difference in the attitudes of the two religious traditions—the Hindu and the Christian—towards conversion is a basic cause of friction between the two. I would like to emphasize that modern Hinduism, as it is lived, is vigorously opposed to conversion from one religion to another on the ground mentioned above, and that this is the mainline and not a marginal view within it.[2] No less a person than Mahatma Gandhi was a vigorous advocate of this view, as is apparent from the following dialogue between him and Charles Andrews:

C.F. Andrews: "What would you say to a man who after considerable thought and prayer said that he could not have his peace and salvation except by becoming a Christian?"

Gandhiji: "I would say if a non-Christian (say a Hindu) came to a Christian and made that statement, he should ask him to become a good Hindu rather than find goodness in change of faith."

C.F. Andrews: "I cannot in this go the whole length with you, though you know my position. I discarded the position that there is no salvation except though Christ long ago. But supposing the Oxford Group Movement people changed the life of your son, and he felt like being converted, what would you say?"

Gandhiji: "I would say that the Oxford Group may change the lives of as many people as they like, but not their religion. They can draw their attention to the best in their respective religions and change their lives by asking them to live according to them. There came to me a man, the son of *brahmana* priests, who said his reading of your book had led him to embrace Christianity. I asked him if he thought that the religion of his forefathers was wrong. He said, 'No.' Then I said: 'Is there any difficulty about your accepting the Bible as one of the great books of the world and Christ as one of the great teachers?' I said to him that you never through your books asked Indians to take up the Bible and embrace Christianity, and that he had misread your book—unless of course your position is like that of the late M. Mahomed Ali's, viz. that 'a believing Mussulman however bad in his life, is better than a good Hindu."

C.F. Andrews: "I do not accept M. Mahomed Ali's position at all. But I do say that if a person really needs a change of faith I should not stand in his way."

Gandhiji: "But don't you see that you do not even give him a chance? You do not even cross-examine him. Supposing a Christian came to me and said he wanted to declare himself a Hindu, I should say to him: 'No.' What the *Bhagawata* offers the Bible also offers. You have not yet made the attempt to find it out. Make the attempt and be a good Christian."

C.F. Andrews: "I don't know. If someone earnestly says he will become a good Christian, I should say, 'You may become one,' though you know that I have in my own life strongly dissuaded ardent enthusiasts who came to me. I said to them, 'Certainly not on my account will you do anything of the kind.' But human nature does not require a concrete faith."

Gandhiji: "If a person whats to believe in the Bible let him say so, but why should he discard his own religion? *This proselytization will mean no peace in the world.* Religion is a very personal matter. We should by living the life according to our lights share the best with one another, thus adding to the

> sum total of human efforts to reach God.' 'Consider,' continued Gandhiji, 'whether you are going to accept the position of mutual toleration or of equality of all religions. My position is that all the great religions are fundamentally equal. We must have innate respect for other religions as we have for our own. Mind you, not mutual toleration, but equal respect."[3]

If we analyze this conversation carefully, we will detect two grounds for Hindu opposition to Christian proselytization, one doctrinal and the other procedural. The first objection is that no change of religion is required even if one accepted the truth of Christianity, because of the pervasive acceptance of the doctrine within modern Hinduism that all religions are valid. The second is that the procedures adopted for propagating Christianity are not considered acceptable. The procedure, according to modern Hindus, is morally dubious—for at least two reasons. The desire to convert someone may lead to two interconnected developments, which may be called the approbative imperative and the pejorative imperative. That is to say, one must project a picture of one's tradition rosier than it is, and must run down the other person's tradition as worse than it is, to facilitate conversion. Thus one is led into falsifying both the realities and truth is compromised. Besides, the church missions are often accused of offering material allurements to would-be converts. From the Hindu point of view, if conversion is to have any basis, it has to be spiritual. Thus, if one is convinced that one's salvation lies only through Christianity then the modern Hindu may reluctantly concede it as a ground for conversion, but the use of material allurement to change one's spiritual alignment is considered unworthy of an authentic religion. Thus both truth and honesty are compromised. Both the goal, as well as the means to attain the goal, that of conversion, become suspect.

The counter-position is stated forcefully by the Indian Christian, Rev. R.C. Das, who rejects the distinction between propagation and proselytization, when the former is supposed to mean proclaiming one's religions without seeking converts:

> The statements that one may preach but not convert, or that in serving one should not be actuated by motives of conversion, show confusion of thought and a lack of knowledge of psychology and normal human behaviour. Why is something preached? And when convinced, are they not inwardly converted? The word "conversion" simply means "change" . . . the Hindu does not object to conversion in politics, a new attitude in science, history, or philosophy. How then is objection to religious conversion valid where a man's happiness and welfare are even more at stake.[4]

As against this, as Grace Y. Kao points out:

> Of course, those who wish to defend their opposition to proselytism only might insist upon the special importance of religion in any given individual's life, the implication being that proselytism raises a set of delicate issues that secular advocacy does not. Indeed, some anthropologists have argued that "chang[ing] one's religion is to change one's world, to voluntarily shift the basic presuppositions upon which both self and others are understood..." Other scholars have emphasized the psychological disorientation that normally accompanies religious conversion: there is grief over the loss of and deliberate break from past beliefs, priorities, rituals, and connections with families and friends... The overall point is that those who are successfully converted by proselytizers are likely to experience a major adjustment in personal and social identity, new kinds of moral authority, and thus, entirely new ways of relating to others...[5]

II

How might one elaborate on this issue further from a Christian point of view?

It needs to be recognized that the idea that there is no need for religious conversion is a Hindu doctrine and not a universal one. Many other religions allow for conversion. This would constitute *a religious objection* to the Hindu position.

It also needs to be recognized that human rights discourse emphasizes the right to religious freedom, which according to the article 18 of the Universal Declaration of Human Rights specifically includes the "freedom to change . . . religion or belief."[6] This would constitute *a secular objection* to the Hindu position.

It could also be argued that Christian exclusivism, which is what the Hindu is really objecting to, comes in different shades. One might take an absolutistic stand that Christianity alone is true. However, within Christianity itself there is the acceptance of the transcendental nature of the transcendent, in the awareness that one can possess only relative knowledge of it. This perspective is shared by many religions of the world, along with Christianity. However, Christianity could still claim that out of all these *relative* formulations, its *own relative formulation* is *relatively* the best. So there is still a case to be made for conversion to Christianity. This could constitute *a philosophical objection* to the Hindu position.[7]

If any one of us suddenly found oneself in possession of what one thinks is the ultimate truth, is it humanly possible for one *not* to want to *share* it with others? It may not be right to construe Christian mission always as an attempt to *impose* one's religious views on others, or to *tempt* or *coerce* others into accepting it (leading to such developments as those represented by "Rice Christians").[8] The underlying motive could well be the desire to share it with others. This may be called *a psychological objection* to the Hindu position.

It is clear, therefore that there are good religious, secular, philosophical, and psychological grounds for allowing Christians to *seek* conversion.

Where the Hindu critique becomes relevant is in the realm of procedure, when such conversion is sought. Thus religiously speaking, a Hindu has as much a right to *object* to conversion as those who have a right to seek it; secularly speaking, a person has as much a right to *retain* one's religion as to change it; philosophically speaking, *each* religion can claim that it is in a relatively superior position, and psychologically speaking, it is quite valid for a person to say "Who are you to ask me to change my religion, even if you think you have the truth? I shall make up my own mind."

In the end then, we are left with valid arguments from both sides, and our task is create guidelines for missionary activity, which will best address the issues as viewed from both sides. The task is complicated by the fact that we are dealing with two basic human emotions. On the one hand, if someone has the truth or has found salvation, one can hardly be expected to keep it to himself or herself; and on the other hand, everyone has the right not to be interfered with by others in one's own pursuit of truth or salvation.

PART TWO

I

A key dimension of religious freedom, as it is understood in contemporary discourse, is the freedom to change one's religion. This linkage of religious freedom with changing one's religion, however, could go two ways: (1) it could mean one's right to change one's *own* religion and/or (2) it could mean the right to ask *someone* else to change their religion. It is the same person who is the bearer of these two rights—one being the right to change one's religion, and the other being one's right to ask someone else to change their religion. It is an important distinction because the two are not symmetrical. My right to change my own religion, as it is my own decision about something to do with myself, may be virtually unconditional, but my right to ask someone else to change their religion involves taking their rights *also* into account, and may therefore is more liable to be conditional.

The current discourse on religious freedom accepts *both* these dimensions of the right to change one's religion. The Article 18 of the International Covenant on Civil and Political Rights (1966) covers both these dimensions of change.[9] The right to change one's religion assumes the following formulation therein: "Everyone has the right to freedom of thought, consciences and religion. This right shall include freedom to have or adopt a religion or belief of his [sic] choice,"[10] in the first clause of the Article. The right to ask someone else to change their religion is not spelled out as such but is inherent in the provision in the same clause in the freedom to "manifest his religion or belief in worship, observance, practice and teaching."[11] This provision of the ICCPR also implicitly brings out the asymmetry between the two rights also quite clearly. Thus clause two, which pertains to the right to change *one's* religion, states: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."[12] The third clause, which pertains to the right to manifest one's religion and thus includes proselytization, runs: "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."[13] Or to clarify the point further: The manifestation of a religion can take two forms: one in which someone else is invited to change his or her religion, and one in which someone else is *not* invited to change his or her religion, as a part and parcel of one's manifestation of one's religion. Hence the importance of the distinction between missionary and non-missionary religions.

The point to bear in mind is that, from the point of view of the proselytizer, who is out to save someone, the distinction involved in the double implication of the use of the expression "change one's religion" does not count for much because, as a proselytizer, one is not contemplating abandoning one's own religion at all and is only concerned with the "change of religion" as implying changing the religion of the potential proselyte. The point needs only to be noted here; its full implications will become clear towards the end of the chapter. It is also worth noting that both the senses of change presuppose exclusive religious identity; I need to "change" my

religion only if I can only follow one religion at a time, just as I can only wear one suit at a time, and the manifestation of belief, if it is to involve change, must involve the adoption of the same exclusive religion as mine by another as a result of this manifestation. The full implications of this point will also become evident towards the end of the chapter.

II

In this way, we may equate the right to religious freedom with the right to proselytize. That this is actually the case is clear from the reports of the United States International Commission on Religious Freedom (USICRF) and Human Rights Watch, where any attempt to restrict Christian missionary activity is regularly identified as a restriction of religious freedom.

III

A sense of mission is a crucial component of Christian self-understanding. The question which needs to be examined is: what implication does this sense of mission possess for the religious freedom of *others*.

Terry Muck has presented a thumbnail sketch of the history and philosophy of Christian mission[14] on the model of paradigm-shifts, following Thomas Kuhn:[15]

> Since we are going to use Thomas Kuhn's insights on paradigm shifts, we start with a brief heuristic outline of the major church mission paradigm shifts. For teaching purposes we will postulate three basic paradigms the church has used and is using to delineate its mission to the world. Each of these three, of course, could be subdivided into many more. But we will focus on three: *The Chosen People Paradigm*, *The Jesus Only Paradigm*, and *The Reconciliation Paradigm*. We will argue that all three are biblical and hence, all three are true. All have been used with success in the church, and in many places are still being used with success. Our argument then is not with their validity as much as with their appropriateness in today's worldwide context. The question I am asking is, which one will account most fully for the growth of the Christian church in today's world?[16]

The rest of this study will now focus on the implications these paradigms possess for the "religious freedom" of others, i.e. non-Christians.

The crucial element, from this point of view, in The Chosen People Paradigm is the following:

> People who see the world this way see it in "us" versus "them" terms. The "us" is sometimes an ethnic group, sometimes a nation, sometimes the church, sometimes a church. The "us" group has two primary missions: (1) to remain pure and holy so that they are worthy of being God's chosen instrument and (2) to take their message to others in such a way that they are convinced to join us—to become part of our group, our empire. They are to cross over the boundary separating the "us" and the "them" and become part of "us." Social theorists describe this kind of understanding of people groups as bounded sets. The important feature of bounded sets is the boundary lines that separate the "us"s from the "them"s. Like front lines in a military campaign, a breach of these lines constitutes the most serious threat to the

> well-being of the group, so great energies are expended to keep the boundaries well-defined and controlled.[17]

Muck goes on to use the distinction between the "us" group as *sheep*, and as "them" group as *goats* (Matthew 25:31–46), to reinforce the point in terms of faunal imagery. Perhaps the force of the point could be toned down by alluding to Jesus' references to "other sheep I have that are not of the flock" (John 10:16), but it can hardly be denied that this has been an important paradigm in the history and theology of Christianity.[18]

Muck does not consider this paradigm appropriate for the Church's mission today. He writes:

> *The Chosen People Paradigm* usually is not the best paradigm for today's mission, however. This is neither because it is not true nor because it is not biblical, but because it does not describe enough. As the church has grown and has become a globalized institution including people of all nations and all languages and all cultures, and as those cultures have themselves ceased to be homogenous and become very complex, a bounded set understanding of mission just does not work. The church has become too diverse. Theology has become too complex. People are so delightfully different. How can we possibly see only "us"s and "them"s? In the world today, *The Chosen People Paradigm* leaves too many wild facts unaccounted for.[19]

Perhaps another way of articulating his dissatisfaction would be to say that this paradigm does not make allowance for the *religious freedom of others*. In fact, in exercising its own religious freedom, the Church did away with the religious freedom of others who were dubbed as heathens and seen as destined for hell. Not only were their rights compromised soteriologically, so to say. It also happened politically. Christians had been persecuted in the Roman Empire before Constantine won a decisive battle in 312 after a reported vision of the cross in the heavens.[20] He issued an edict in 313 granting religious freedom to the Christians.[21] Under Theodosius I, who ruled from 379 to 395, the Empire officially became a Christian state. By the end of the fifth century Christianity "was the faith claimed by the majority of the people in the vast former Roman Empire,"[22] although the population of Christians has been estimated at around 10 percent of the population in the time of Constantine. This Christianity arose in a world of religious pluralism, but its success put an end to it. That would be the natural consequence of the success of The Chosen People Paradigm.

The second paradigm Muck calls The Jesus Only Paradigm:

> Since many of the problems with the *Chosen People Paradigm* had to do with the conflicts created by the hard-edged boundaries between peoples necessary to the concept, the alternative paradigm has a strong center and porous boundaries. There has never been much doubt what the center should be—Jesus Christ is the heart of the Christian religious tradition, and when a center was needed, Jesus Christ was the obvious choice. Sociologists call such a social configuration a centered set. The center, not the boundaries are the non-negotiables. It is from the center, not the boundaries, that the message is sent out; instead of being defined by the boundaries. People are drawn in, sometimes landing at varying distances from the center, attracted to it like the pull of gravity. In church terms, people could belong to the church with varying degrees of commitment; the job of the church is to draw people closer and closer, but trusting that the influence of the center would hold for a long way out.[23]

This was, as Muck notes, "not the original paradigm of scripture,"[24] which was The Chosen People Paradigm but this second one has nevertheless, for centuries, been "an alternative mission paradigm at work."[25] It is also a more attractive paradigm than the previous one in terms of the criterion used here, namely, that of the religious freedom of others. Thus whereas the sheep and goat imagery conjures up images of herding and animals being put in stockades, in terms of this paradigm it "is not necessary to define who is in and who is out because the center, through its gravitational pull holds it all together."[26] Moreover, the influence of the center could be visualized "both as centripetal and centrifugal, both sending energy out further and further in mission, but drawing in more and more in discipleship."[27]

It might be helpful to draw a distinction between religious freedom within a religious *community,* or internal religious freedom, and religious freedom *in relation to other communities*, or external religious freedom. The Christian community is also able to enjoy relatively more religious freedom within itself in The Jesus Only Paradigm, compared to the Chosen People Paradigm, because the former tended to emphasize purity and orthodoxy at the expense of charity, but in the case of the latter, "as long as one's Christology is sound and sure,"[28] it was "not so necessary to have long and elaborate, non-negotiable doctrinal positions."[29] According to Muck, non-Christian religions do not come out any better in the second paradigm, as "belief in and dependence upon the Son of God is a baseline requirement that cannot be negotiated."[30] It could thus be argued that external religious freedom remains unchanged even in this paradigm. However, some Christologies could be more accommodating than others and the tension, in Christ's teaching, between the imperative to *love* the neighbour and to *convert* the heathen could be mollifying in this context, although even here one could argue that one wants to convert the heathen because one loves the heathen. As E.L. Allen wrote in 1960:

> The Christian is under two obligations in this matter, one to truth and one to love, and these have equal claim upon him. On the one hand he must stand by that which convinces him of his truth . . . On the other hand, he will look with charity, as on all men, so on all manifestations of spiritual life.[31]

The point is that the concept of the religious freedom of others provides a criterion for judging these paradigms, and further, that by drawing a distinction between internal religious freedom and external religious freedom one could nuance the point further.

Terry Muck does not feel that this second paradigm is any more appropriate for our times than the first. He writes:

> But like *The Chosen People Paradigm*, *The Jesus Only Paradigm* suffered from an increasing number of anomalies and wild facts. For one, focusing on Christ as the initiator and enabler of salvation created some interesting theological dilemmas for people who lived before Christ. For another, Jesus, some suggested, was a man like many other great religious leaders. A great man; or perhaps one among many great men? The problems of the world religions are not solved, or even addressed well, by *The Jesus Only Paradigm.*[32]

Or, in a word, or two words, religious pluralism continues to test the limits of this paradigm, in just as it tested those of the first.

Before identifying a paradigm which would be appropriate for our times, Muck refers to some other moves which have been made in the pursuit of the same goal. It might be useful to review his critique of these as paving the way for the discussion of his next paradigm. He identifies three such moves: (1) a "theological emphasis on Trinitarian theology," (2) "ecclesiological suggestions of the emerging church movement," and (3) "the missional emphasis on holistic mission work." The attempt to overcome the limitations of a *The Jesus Only Paradigm* has lead to a renewal of Trinitarian theology but Muck thinks that what it often results in is "simply another version of our centered set paradigm, The Jesus Only Paradigm, only instead of having Jesus at the center, the Trinity is put at the center,"[33] in addition to denying "the relational nature of the Trinity itself, the very reason it is a sign of hope."[34] As for the emerging church movement, the positive element in it consists in acknowledging the "anomalies that are accumulating around the institutional church,"[35] such as "weakness and aging of traditional denominations, the lack of relevance of worship to many people, and the sharp division between personal piety and social concern,"[36] but Muck does not see much hope if the emerging church also goes on to explain itself in terms of traditional polity.[37] Similarly, the new missional emphases, as on a more holistic mission or a contextualization of the gospel, are welcome developments according to Muck, as also the "new monastic movement, the movements of women leadership and full participation in the church." and the "growing interest in environmental concern." But all this according to Muck only points to the fact that we need a new paradigm to allow these developments to flourish.

Muck is thus led to propose *The Reconciliation Paradigm* as the right one for our times. He writes:

> *The Reconciliation Paradigm* must be based on a relational map of the world. It maps the relationships of the world, not the beliefs of the world; it does not show boundaries as much as it shows networks, relationships within and across boundaries. It has no center, unless we consider all points center at the same time. In Scripture, *The Reconciliation Paradigm* is spoken about metaphorically as the "new heaven and earth," (2 Pet. 3:13, Rev, 21:1) where "the wolf will live with the lamb" (Isa. 11:6) in peace. It is the ultimate unity Jesus talks about in John 17, "that all may be one." It is the relational reconciliation Paul talks about in 2 Corinthians 5, the ministry of reconciliation, and waxes eloquent about in Ephesians 1: "to bring all things in heaven and on earth together." It will be a time when "the earth will be full of the knowledge of the Lord as the waters cover the sea" (Isa. 11:9).[38]

This paradigm brings a new set of rules into play. One such rule is that it is based on practices rather than beliefs, because practices involve relating with others. Beliefs now do not set boundaries so much as articulate "our deepest experiences of God,"[39] in contrast to their use, for instance, in *The Jesus Only Paradigm*. Another rule consists of the extension of the concept of the "priesthood of all believers" to that of the "missionhood of all believers", as the believers start living in religiously plural societies. Yet another rule is the preference for inclusion over exclusion, specially as compared to *The Chosen People Paradigm.*

The application of the criterion of religious freedom yields positive implications for this paradigm. In terms of internal religious freedom, this third paradigm provides for more of it than the other two, and the same holds for external religious freedom. This follows from the relational emphasis of the paradigm: "The network of God's creation already exists. We don't need to 'believe' in it. We need to glorify God from within its web. In a network, we are interested in how the pieces fit together, not what the boundaries separating them are."[40]

IV

One could, however, propose another model for Christianity as appropriate for our times, building on a hint contained in Terry Muck's discussion of *The Reconciliation Paradigm*, when we writes: "In religious terms this means that we can consider part of our identities to be Christian, but that does not exhaust the options: we can be devoted Christians or nominal Christians; we can be former Christians or present Christians or future Christians; we can be Buddhist Christians, or Jewish Buddhists (JewBus); or we can be Christian mystics or Christian nationalists. The options are endless."[41]

In order to create a fourth paradigm out of these remarks, one needs to take the help of history in two respects. One needs to acknowledge the fact that Christianity, until very recent times, has been essentially Eurocentric. Its main demographic base has been Europe, or areas which were settled by Europeans over the past few centuries. But now that its demographic base is becoming increasingly diversified, it may no longer be considered European. This is a very significant point. Muck speaks of "moments of new missions" and provides some examples of this from scripture, when he writes:

> Indeed, new missions are like acts in the drama of the gospel story. New missions pop up as a result of some great cataclysmic event (like a worldwide flood), some great human failure (like Adam's sin), some plan born of nature of God (like God's son Jesus dying on the cross for humanity), or a combination of these three. New missions are God's desired response to the new conditions that result from these cataclysms, failures, and divine initiatives.[42]

The Christian community or the church has also experienced the human version of the divine drama: when a new "moment" has appeared in the context of mission. The conversion of Constantine, for instance, or of Paul, could represent such moments, when new situations arise and the community deals with them. Muck speaks of responses the new situations evoke in terms of paradigm shifts,[43] and mentions anomalies or wild facts which accumulate and generate further paradigm shifts. The "wild facts" I would like to allude to here are "the tremendous growth of Christianity in Oceania, Africa, and Latin America [which] could be considered wild facts,"[44] calling for a new paradigm.

Let us pause to remind ourselves for a moment how momentous this moment is. Devaka Premawardhana identifies "three notable turning points in the relationship between Christianity and world religions,"[45] after Christianity ceased

to occupy "not just center stage, but the *only* stage in many higher education curricula."[46] The first was marked by the development of the "sympathetic study of religion"[47] or what some might refer to as the emergence of the phenomenology of religion in religious studies. The second was marked by the foregrounding of the question "whether the very category of religion reflects uniquely Christian preoccupations."[48] Now one is in the throes of the third development: "with Christianity's simultaneous retreat in Europe and rise in the global South comes a third development in the relationship between Christianity and world religions. It is signaled in the subtitle of Dana Robert's recent publication, *Christian Mission: How Christianity Became a World Religion.*"[49]

Muck himself writes:

> The self perception Westerners tend to have of being the chosen custodians of the gospel story and the senders of mission workers to the four corners of the world is being shattered by the apostolic urges of Korean, African, Indian, Chinese, and other Christian national churches who are sending mission workers to bring the whole Gospel to the whole world—the West included.[50]

The new paradigm is called for by this blowback of Christianity into Europe because there is one basic difference in Christianity as it has been practised in Europe, and as it has been practised in Asia, Africa, and Latin America. In Europe, being a Christian involved an *exclusive religious identity* but the Christianity which is coming back to Europe has often participated in situations of *multiple religious identity.* One might even argue that the Christian background of the word *religion* may be largely responsible for fact that the word *religion* itself is associated with exclusive religious identity in its Western formulation.

All these points coalesce luminously in the following remarks by Devaka Premawardhana. The reader who goes through it will realize why no apology is required for the length of the citation:

> In the wake of these conceptual critiques of religion, what does it mean to speak, as scholars of world Christianity tend to do, of Christianity as a world religion? Enthusiastic accounts of Christianity's newly global status are possible because of Christianity's growth outside the West. There, however, post-Enlightenment and post-Reformation assumptions about religion have held less sway than they have in the West. Jesuit missionaries like Matteo Ricci in China and Roberto de Nobili in India, by translating the gospel into Confucian and Tamil terms, respectively, long ago demonstrated the futility of compartmentalizing customs and cosmologies into non-overlapping systems. Enslaved Africans, when forcibly transported across the Atlantic, stealthily affiliated their deities with Catholic saints, maintaining continuity with their past despite tremendous pressure to erase it. Even Protestants, heirs to the Reformation emphasis on belief, have been shown to fuse Christian and non-Christian traditions in countries as diverse as Brazil, Sudan, and Thailand. These examples illustrate that in much of the world, particularly where Christianity is most rapidly spreading, religions are generally not lived as mutually exclusive entities or experienced as discrete "belief systems." This suggests another question: if European Christianity is what, in part, gave systematic and bounded qualities to the modern category of religion, is world Christianity still a world religion? My presumption is posing such a question is that world Christianities can be used to diagnose the limits of European categories—religion being just one of them—and thereby contribute to the project of provincializing Europe itself.[51]

One must now add that this trend towards multiple religious identity, or perhaps we should call it flexible religious identity, is not merely something coming in through Christianity from the outside, from the non-Western world. It is paralleled by a process occurring within the Western world itself. One indication of this is the decreasing willingness of people to describe themselves as "religious" and an increasing readiness to identify themselves as "spiritual," a fact borne out by numerous surveys, specially in the U.S.A. The word "religion" has acquired the connotation of an institutionalized religion and of exclusive religious association in the mainstream, while the term spirituality signals a move in the opposite direction. A second indication is the fact while many people *formally* continue to identify themselves as Christian, and thus in terms of an exclusive religious identity, they *functionally* draw freely upon other religions or spiritualities for enriching their lives. This would be one way of explaining the fact that, while on the one hand, 76 percent of Americans continue to identity themselves as Christian according to a 2008 survey, according to a Harris Poll of 2008, 24 percent of Americans admitted to believing in reincarnation. [This figure is said to be 30 percent among blacks]. Yet another way of arriving at the same conclusion is provided by the appearance of such pieces as one by Lisa Miller entitled "We Are All Hindu Now" in *Newsweek* (August 15, 2009). Once one gets past the sensationalism of the title, it contains a remarkable statistic, that according to "a 2008 Pew Forum Survey, 65 percent of U.S. [Americans] believe that many religions can lead to eternal life—including 37 percent of white evangelicals, the group most likely to believe that salvation is theirs alone."[52]

In thus moving forward, however, Christianity may only be going back to the early period of Christian history, to Christianity as it probably was before the fifth century, when being a Christian may have been consistent with double-belonging. When I asked my colleague, Ian Henderson, over an email, whether Paul considered himself a Jew until the end of his days, his response was admirably concise: "Yes". One could thus be a Jew who was a Jesus-worshipper, or a Gentile who was a Jesus-worshipper. But being a Jew and a Jesus-worshipper had not yet emerged as exclusive categories, which is what seemed to have happened by the fifth century, when these lines got firmly drawn. In a sense then, in accepting a multiple identity paradigm, Christianity would only be being true to itself.[53]

Notes

1. McLennan (2009, pp. 3–4). See Sri Chandrasekharendra Saraswati Swamigal (2010, pp. 7–9); also see Mahadevan (1972, pp. 294–95).
2. See Sharma (1998).
3. Gandhi (1950, pp. 231–32), emphasis added. Also see (ibid.):

> There is in Hinduism room enough for Jesus, as there is for Mohammed, Zoroaster and Moses. For me the different religions are beautiful flowers from the same garden, or they are branches of the same majestic tree. Therefore they are equally true, though being received and interpreted through human instruments equally imperfect.

> It is impossible for me to reconcile myself *to the idea of conversion after the style that goes on in India and elsewhere today. It is an error, which is perhaps the greatest impediment to the world's progress towards peace.* "Warring creeds" is a blasphemous expression. And it fitly describes the state of things in India, the mother, the motherhood is on trial. Why should a Christian want to convert a Hindu to Christianity and vice versa? Why should he not be satisfied if the Hindu is a good or godly man! If the morals of a man are a matter of no concern, the form of worship in a particular manner in a church, a mosque or a temple is an empty formula, it may even be a hindrance to individual or social growth, and insistence on a particular form or repetition of a credo may be a potent cause of violent quarrels leading to bloodshed and ending in utter disbelief in Religion, i.e. God Himself.

4. Cited in Smith (1963, pp. 173–74).
5. Kao (2008, pp. 85–86).
6. Brownlie (1994 [1971], p. 25).
7. It could be claimed, for instance, as Max Mueller might, that while all religions are true, Christianity is superior (see Sugirtharaja 2003, p. 62).
8. See Hackett (2008, p. 79).
9. See Brownlie (1992, p. 132).
10. Ibid., p. 132.
11. Ibid.
12. Ibid.
13. Ibid.
14. Muck (March 2010, pp. 79–95).
15. See Kuhn (1996 [1962], 1957). This approach is not without precedent, as Muck himself notes, in explaining the use of the plural form "paradigms" (ibid., p. 81 note 4): "Note the plural 'paradigms' here. Kuhn leans toward the idea that in scientific research a single paradigm dominates at any one time. Missional theologians who have used Kuhn's paradigm construct, primarily Hans Kung and David Bosch, suggest that one of the differences between scientific and missional paradigm thinking is that Christian missions tend to operate according to multiple paradigms at any one time."
16. Muck, op. cit., p. 83.
17. Ibid., pp. 84–85.
18. Ibid., p. 84. "This is a very powerful paradigm. Throughout church history political and economic powers, whose constituencies were primarily Christian, have stumbled over themselves claiming the mantle of being God's chosen people at their particular time and place. The Roman Empire came to be called the Holy Roman Empire after Constantine's conversion. The Christian Crusaders of the tenth and eleventh centuries saw themselves as God's chosen instrument to free the Holy Land from the infidels. The colonial powers, for all their focus on economic empires, were in no small part motivated by their desire to bring Christian civilization to the unwashed—in their view they were called to do so. And we still see it happening today. One of the founding groups of the United States, the Puritans, used deliberate language to convey their conviction that the new chosen people were—well, Puritans."
19. Ibid., p. 85.
20. Oxtoby, ed. (1996, p. 226).
21. Ibid.
22. Fisher (2008, p. 317).
23. Muck, op. cit., pp. 86–87.
24. Ibid., p. 86.
25. Ibid.
26. Ibid., p. 87.
27. Ibid.
28. Ibid.
29. Ibid.

30. Ibid., pp. 87–88.
31. Cited in Oxtoby (1983, p. 102).
32. Muck, op. cit., p. 89.
33. Ibid.
34. Ibid.
35. Ibid. Muck cites McLaren (2007) here.
36. Muck, op. cit., p. 89.
37. Ibid.
38. Ibid., p. 91.
39. Ibid., p. 94.
40. Ibid., p. 94.
41. Ibid., p. 93.
42. Ibid., p. 79.
43. Ibid., p. 80.
44. Ibid., p. 83.
45. Premawardhana (2011, p. 30).
46. Ibid.
47. Ibid.
48. Ibid.
49. Ibid.
50. Ibid., p. 80.
51. Premwaradhana, op. cit., p. 32.
52. Miller (2009, p. 70).
53. For a further exploration of this possibility see Phan (2004, Chap. 4.) This might also have implications for the larger Christian community, which at another period in history seems to have been less concerned with internal sectarian exclusiveness, to denote which Christopher MacEvitt uses the term "rough tolerance"; see MacEvitt (2008).

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Chapter 13
Native American Religious Freedom

I

It is a major thesis of this book that our concept of religious freedom cannot be divorced from the concept of the religion we possess. It is also the thesis of this book that not all of those religions, which have been brought within the rubric of religion, possess the same concept of religion, with the consequent possibility that those religions, which do not understand the term religion as it is understood in the regnant discourse, may actually possess a concept of religious freedom which may also be at variance from the concept of religious freedom espoused by those who adhere to the concept of religion as it prevails in the regnant discourse. Some of the previous chapters were concerned with demonstrating that this theoretical possibility actually constituted a historical reality; that the religions of Asia construed the phenomenon referred to by the Western word "religion" in a way which differed markedly from its semantic provenance in a Western context and that this difference then did have a direct bearing on how the concept of religious freedom was understood in Asian religions and civilizations.

These facts, that the word religion may have been understood differently in different parts of Asia, where it has come to be deployed on account of the widespread use of English and other Western languages, has gained a fair measure of acceptance, although the allied implication that the concept of religious freedom may be affected by this fact has yet to gain full recognition. Nevertheless, the ground for it has been prepared by the recognition that the religions of Asia may take the word religion in a somewhat different sense than in which it is understood in Europe, so that it is only a matter of time before the logical corollary, that the meaning of religious freedom may also be understood differently therein, manifests itself. In other words, the acceptance of the possibility of a different understanding of religion in an Asian context has created intellectual room for the appearance and acceptance of the possibility that the understanding of religious freedom itself may be affected by this fact.

We now turn to the use of the word religion in the context of yet another set of religions wherein its use is potentially problematical, in such a way as once again problematizes the concept of religious freedom. I have here what are called tribal

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or indigenous religions in mind, a category of religions which I shall denote by the term “primal religions”. The choice of the term is hopefully not arbitrary[1]; in any case it reflects the current trend in some academic circles.[2] The importance of their role in our discussion was hinted at earlier. The thread relinquished then is picked up now, and subjected to a more thorough investigation.

One must begin by grasping a few salient facts about the primal religions, to fully grasp the manner in which they problematize the concept of religious freedom. Huston Smith explains:

> The historical religions now pretty much blanket the earth, but chronologically they form only the tip of the religious iceberg; for they span less than four thousand years as compared with the three million years or so of the religions that preceded them. During that immense time span people lived their religion in an importantly different mode, which must have shaped their sensibilities significantly. We shall call their religious pattern primal because it came first, but alternatively we shall refer to it as tribal because its groupings were invariably small, or oral because writing was unknown to them. This mode of religiosity continues in Africa, Australia, Southeast Asia, the Pacific Islands, Siberia, and among the Indians of North and South America.[3]

Primal religions are a relatively new arrival on the table of religious studies proper. This is illustrated by the fact that when the book just quoted from first appeared in 1958 under the title *The Religions of Man*, it did not contain a chapter on primal religions. It does one now in its new incarnation as *The World’s Religions*, when it appeared in 1991. The author takes note of this fact in the preface to the second edition with the following words:

> I have also added a short concluding chapter on the oral traditions. This is partly to acknowledge that the historical religions the book covers are latecomers; for the bulk of human history, religion was lived in tribal and virtually timeless mode. A strong supporting reason, however, is to allow us to affirm our human past. Recent decades have witnessed a revival of concern for the feminine and the earth, concerns that the historical religions (with the exception of Taoism) tended to lose sight of, but which tribal religions have retained.[4]

The reason for including primal religions in the present book, though not unrelated to what has been said above, is slightly different. The religions we have hitherto focused on, in the context of the discussion of the meaning of the word religion and its attendant implication for the meaning of the word religious freedom, are what have been considered the major religions “as determined by their longevity, historical impact, and number of current adherents”,[5] namely, Hinduism, Buddhism, Confucianism, Taoism, Judaism, Christianity, and Islam. By contrast, the primal religions provide a different context for operating with the term religion. This is dramatically illustrated by the fact that “literacy is unknown to the primal religions”.[6] Moreover, primal religions are practiced by small-scale societies, one of the reasons why they are sometimes referred to as tribal religions. However, the word religion, as it is applied today, gained currency in the nineteenth century, which was dominated by the evolutionary paradigm. But in order to understand the experience of primal religions:

> We can begin by putting behind us the nineteenth-century prejudice that later means better, a view that may hold for technology, but not for religion. History does show that social

roles become more differentiated as societies grow in size and complexity. Lines between clergy and laity get drawn, and division between sacred and secular come to view; in this respect later societies resemble later biological species, which develop differentiated limbs and organs. But in both cases life was present from the start, and in the religious case it is a mistake to assume that later historical expressions are nobler than earlier ones. If God does not evolve, neither, it seems, does *homo religiosus*, not in any important respect. Mircea Eliade came to believe that archaic peoples are more spiritual than their descendants because, clothed as they are in leaves and skins and nourished directly by the fruits of the earth, they are unencumbered by external devices. However that may be, everything that we find flowering in the historical religions—monotheism, for example—is prefigured in the primal ones in faint but discernible patterns.[7]

II

When we now proceed to examine the primal religions for the light they might shed on the concept of religious freedom, the way we examined the role of Asian religions in a similar context, we are confronted with a similar situation articulated famously by the well-known scholar of primal religions, Åke Hultzkrantz, namely, that there is no word for religion in primal religions.[8]

This view, that the adherents of primal religions had no *word* for religion must be carefully distinguished from the view that they *had* no religion. Martin C. Loesch explains:

> . . .the general assumption by Europeans when they encountered Native Peoples was that the natives knew no religion. Out of ignorance and intolerance of theologies different from their own, the Europeans called the indigenous peoples pagans, savages, brutes, and heathens. The process of cultural destruction began with the first Columbian contacts.[9]

He then cites David E. Stannard as follows:

> [E]ach time the Spanish encountered a native individual or group on the course of their travels they were ordered to read to the Indians a statement informing them of the truth of Christianity and the necessity to swear immediate allegiance to the Pope and the Spanish crown. . . .As one Spanish conquistador and historian described the routine: "After they had been put in chains, someone read the *Requerimento* without knowing their language and without any interpreters, and without either the reader or the Indians understanding the language they had not opportunity to reply, being in immediately carried away prisoners, the Spanish not failing to use the stick on those who did not go fast enough."[10]

Language was an obstacle at the time in one way; now centuries later it is an obstacle in another way: "because on its own terms, all Indian traditions and beliefs must be translated, in order for their petition to be heard in the American judicial system."[11] As Martin C. Loesch explains again:

> As it was at that time, language is currently one of the primary obstacles. Because the dominant society has not accepted native spirituality on its own terms, all Indian traditions and beliefs must be translated in order for their petition to be heard in the American judicial system.

> This necessity might seem only practically expedient, but it has significant consequences. The result is that the plaintiff Indians in *Smith* had to describe their use of peyote as "sacrament," even though that word has no currency in Indian spirituality. Indians describe their sacred places as churches or altars in order to help non-Indians understand their significance. They have analogized moose meat used in a funeral ceremony to the "wine and wafer of Christianity." All these phenomena are understood, if at all, only in translation, not in their original terms. Indeed, Native American traditional languages do not even have a word to express the European notion of "religion." These differences frustrate any discussion of spiritual practices.[12]

The main point may as well be presented now, that the religious freedom of the American Indians, as in the "free exercise of religion", could probably not be preserved under the American legal system because their concept of religion differed from the Western in significant ways. Martin C. Loesch notes, for instance:

> Native American spiritual practices manifest great diversity from group to group. They also tolerate substantially more internal diversity than does the Judeo-Christian tradition. Within Native American life there are no accepted canonical texts, no sense of orthodoxy. The *Lyng* court saw in this lack of uniformity a source of doubt as to the validity of the claims of the plaintiffs. In reality, however, Indian traditions simply allow a greater sense of pluralism than do others. Unfortunately, this diversity has not been accepted by non-Indians as an essential aspect of tribal beliefs.[13]

He also goes on to point out a second set of differences:

> Native American spiritual traditions tend to be more spatially oriented and less time-oriented. Western European religions are based on a different relationship to space and an "assumption that time proceeds in a linear fashion." The result for Judeo-Christian religions is that "[r]evelation has generally been considered as a specific body of truth related to a particular individual at a specific time." For Native Americans, "[r]evelation [is] a particular experience at a particular place, [with] no universal truth emerging."[14]

He then goes on to say:

> Finally, Native American spiritual practices are mystifying because they are generally conducted in secret and in remote places. Most non-Indians have never witnessed an authentic Indian spiritual ceremony. Because they have been remembered through the oral history of discrete communities, there has been little opportunity even for those with interest in Native American spirituality to understand and appreciate them.[15]

How do these aspects of "religion" as practiced by primal peoples, in this case American Indians, cause problems for their affirmation of religious freedom? Loesch draws attention to two aspects of the situation. One problem caused by the way they practice their religion is that:

> Because they are different from Europeans, all Indians are seen as a mass or a unity. Most people fail to see that individual tribal groups and indeed individual Indians have different experiences of spirituality and different belief systems. Native Americans are quick to point out that their traditions are as complex and varied as the multiplicity of their cultures would suggest. The first problem Native Peoples face is that judges fail to accept that Native American belief and practice is itself pluralistic and varied.[16]

It is however the second aspect which has a direct bearing on the problematic as it is being addressed in this book. "The second problem Native Americans face when

they present constitutional challenges to government action is that they are asking judges to protect religious beliefs and traditions fundamentally different from their own. If courts are to make insightful decisions about Native American religious exercise disputes, they must have some understanding of the nature of Indian life and of its differences from that of the dominant culture."[17] This aspect stands out starkly in two ways: in the role the *community* and *land* play in American Indian religion, which goes unappreciated in the American legal system. It is not sufficiently realized that American Indian spirituality "is communal. Christianity, on the other hand, is premised on an individual response to revelation. Indian tribal culture is dominated by religion."[18] What this means is that "the interdependence of subsistence living requires that every aspect of the community be integrated. There is, of course, a deep individual dimension to Indian spirituality. But the communal character of belief and practice informs the connection to the natural world and the connectedness of reality."[19] This point is admirably illustrated by the following incident:

> Oren Lyons was the first Onondagan to enter college. When he returned to his reservation for his first vacation, his uncle proposed a fishing trip on a lake. Once he had his nephew in the middle of the lake where he wanted him, he began to interrogate him. "Well, Oren," he said, "you've been to college; you must be pretty smart now from all they've been teaching you. Let me ask you a question. Who are you?" Taken aback by the question, Oren fumbled for an answer. "What do you mean, who am I? Why, I'm your nephew, of course." His uncle rejected his answer and repeated his question. Successively, the nephew ventured that he was Oren Lyons, an Onondagan, a human being, a man, a young man, all to no avail. When his uncle had reduced him to silence and he asked to be informed as to who he was, his uncle said, "Do you see that bluff over there? Oren, you *are* that bluff. And that giant pine on the other shore? Oren, you are that pine. And this water that supports our boat? You are this water."[20]

The other problematic dimension is provided by the relationship of the American Indians to land. "The history of Indian interaction with whites has been a struggle for land. European immigrants wanted land to occupy and develop, to exploit and civilize. For the Indians, this struggle has been not only a territorial issue, but also a spiritual issue, and a question of cultural survival."[21] We know that the "Indian relationship with land is intimately spiritual. Because relationship with the earth pervades the entire Indian existence, any damage to the land affects the entire people."[22] Thus the two dimensions—of community and land—come together.

III

The experience of American Indians in the United States provides a good test-case of the thesis that one's concept of religion has a vital bearing on one's concept of religious freedom, because the American Indians in the United States practiced their religion under a regime which ostensibly upheld religious freedom, as understood in terms of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."[23] One must, however, in the interest of clarity, make a distinction here between the historical and

conceptual dimensions of the issue. It is the conceptual issues raised regarding the religious freedom of the American Indians by this clause which constitutes our focus of interest. This is not to say that the historical dimension is not important or of little interest. How can it not be a matter of interest to know that the First Amendment applied only to the Federal Government until 1868, after which it was made applicable to the states. Or that the "Bill of Rights was added to the Constitution at a time when many Indians did not recognize the United States as a superior sovereign to whom they owed allegiance."[24] Or that "the Bill of Rights did not come into effect until Indians were made citizens in 1926."[25] Nor can the fact be ignored that despite the fact that "the establishment clause of the First Amendment was intended to curb abuses of the colonist's religious freedom," "from the beginning, the Federal Government's effort to convert Indians to Christianity became a cornerstone of its Federal Indian policy",[26] and so far as the free exercise clause is concerned, "outright prohibition of tribal religions by the...Federal Government began in the 1890s. Federal troops slaughtered Indian practitioners of the Ghost Dance at Wounded Knee, and systematically suppressed the tribal religion on other Indian reservations. In 1892 and 1901, federal regulations outlawed the practice of tribal religions entirely, and punished Indian practitioners by either confinement in the agency prisons or by withholding ration."[27] This prohibition was not lifted until 1935.[28] Important as these facts are, the analysis in this chapter will be confined to the conceptual level.

It might be useful to begin our discussion by surveying what rights are conferred by the establishment and free exercise clauses. They can be traced back to the fact that many of the Europeans, who settled in North America, were fleeing religious persecution and hoping to find freedom of worship in the new land. The establishment and free exercise clauses were meant to realize this dream. The establishment clause separates church and state, both at the federal and state levels, rendering the state neutral in relation to religion. Its purpose is twofold: to protect the state from religion, by preventing it from getting enmeshed in religious issues, and to protect religion from the state, as when a state might try to promote or inhibit a religion. It largely concerns the government; the free exercise clause concerns the people. It allows people to follow their own conscience in the matter of religion or not to follow any religion. The two clauses, operating together, thus ensure that religion is left to the individual and family and ceases to be a concern of the state, and the state abstains from meddling into religion, and from preferring one religion to another or religion over irreligion or vice versa.

What now needs to be examined is how the American Indians have fared under this dispensation. As religion covers the whole of life in the context of American Indians, the considerations mentioned above may carry even more weight in their case than that of an average American (without impugning the average American's religiosity) by virtue of the centrality enjoyed by the traditional Indian religious perspective in the life of the American Indian.

Apart from the special relevance of the clause to the American Indians, noted above, an equally important point of the extra relevance of the establishment clause could also be made out for the American Indians, given the effort to Christianize

them even by the state, apart from the missionaries,[29] or by the state through the missionaries.[30] This provides an interesting example of what can happen to a religious tradition which does not conform to the prevailing concept of religion and how the protections made in the light of the regnant religion do not apply to it or lead to perversions. Thus "the Act of April 10, 1869 (16 Stat. 40) established a board of Indian commissioners to oversee the administration of Indian affairs. President Grant solicited nominations from the churches and appointed lay churchmen who had the belief that the agencies should be parceled out to the various Christian denominations."[31] This violates the establishment clause but this is not all, because the "missionaries did everything they could to eliminate the native religions."[32] "What was more serious," Francis Paul Prucha writes,

> was the complete disregard for the religious views and the religious rights of the Indians themselves. Quakers, Methodists, Episcopalians, and all other Protestants, fighting for religious liberty of their own groups on the reservations, made no move to grant so much as a hearing to the Indian religions. The record of the Catholics was no better. They criticized Protestant bigotry and called for freedom of conscience, but that freedom did not extend to native religions, which were universally condemned. The missionaries were not interested in the Indians' right to maintain and defend their own religion. *By religious freedom they meant liberty of action on the reservations for their own missionary activities*. (Emphasis added.)[33]

Another dimension of the operation of the establishment clause was revealed when the right-of-way through Osage lands to Missouri was granted to the Kansas and Texas Railway Company by the congress in the 1890s. The Supreme Court declared, while disregarding Indian protests and upholding the right of the congress to do so, that:

> though the law as stated with reference to the power of the government to determine the right of occupancy of the Indians to their lands has always been recognized, it is to be presumed, as stated by the Court in the Buttz case, that in its exercise the United States will be governed by such considerations of justice as will *control a Christian people in their treatment of an ignorant and dependent race*.... (Emphasis added.)[34]

Vine Deloria, Jr. is therefore led to ask:

> If the tenets of Christian doctrine, or concepts of justice are the criteria for judging the propriety of federal acts towards the Indians, has the United States established the Christian religion and abandoned neutrality in this respect? Only if the United States Constitution protects denominational differences, not substantive religious differences, could this criterion be in accord with the intent of the Constitution.[35]

Although most of the illustrations which follow will belong to the free exercise clause, the Establishment Clause also provides an example of how a different concept of religion problematizes current notions of religious freedom. Thus while "generally, a free exercise claim is at issue, but occasionally the government will claim that even if a free exercise violation is found the requested government accommodation of Native American spiritual practice would amount to an Establishment Clause violation."[36] Thus it has been pointed out that courts evaluating Native American free exercise claims have found Establishment Clause

problematical when asked to protect religious freedom on *government lands*. “In *Inupiat Community of Arctic Slope v. United States*, the court observed that the Inupiat claims sought to deprive the public of normal use of the seas at issue and therefore created serious establishment clause problems. The court in *Crow v. Gullet* notes that other courts have expressed concern about affording special treatment to Indians and to becoming excessively entangled in religion.”[37]

If the American Indians had claimed that their church boundaries were being demolished and they needed to be protected, then in all probability—depending on the circumstances of course: if the court decided not to intervene, it would *not* in all probability have argued that it can’t do so because thereby it was endangering the establishment clause, because to claim such protection is within the normal exercise of religion as viewed by the court. The use of land for religious purpose by the American Indians, however, does not conform to parameters of religious life considered as such by the court, so it deems any such intervention as potentially involving not the protection, but the establishment of religion.

The issue is of course also complicated by the fact that *government* land is involved. But if a church happened to be built on government land which sought to protect its boundaries, could the court conceivably argue that any attempt by it to intervene would amount to the danger of establishing religion, because it will then be interfering with peoples right to move freely on government land if it sided with the church?

It is worth noting that at last “one court found that where government action violates the free exercise clause, the establishment clause ordinarily does not bar judicial belief.”[38] These kinds of adjustments may be necessary if the existing framework of religious and legal discourse is extended to deal with definitions of religion and religious freedom it was not designed to handle, but is now called upon to accommodate.

To move to the free exercise of religion, it is important to distinguish here between an earlier *compelling interest test* and a later *rational basis test*. Under the compelling interest test, the government activity in question had to be more than just reasonable or rational; the government needed to establish a substantial and legitimate objective to justify that this particular encroachment on religious freedom was necessary. As against this, the *rational basis test* requires only that the law or activity in question have a rational basis in order to pass judicial scrutiny. Such a switch of course places almost all religious practices at the risk of being restricted by some “neutral” law but actually places the minority religions at greater risk than the majority religion, because, as some have pointed out, the court is not likely to decide to build a road through St. Patrick’s Cathedral in New York, but may be quite willing to allow one through an Indian reservation.

The first amendment was put in place to avoid the dangers of majoritarianism. But the way it has been interpreted in the *Lyng* case “puts the religious interests of minorities in the hands of the majortarian dominated branches of government to protect them from infringement on fundamental rights by those same branches.”[39]

It also has the effect of impinging most adversely on those aspects of the American Indian concept of religion which conform least to the regnant concept

of religion: the importance of *community* and *land* in its concept of religion. As Martin C. Loesch notes:

> As a result of the *Lyng* decision, the sole exercise in a free exercise conflict is whether a government action coerces an individual into violating his or her religious beliefs. An infringement can be either indirect coercion or a penalty, but the effect of a government action upon the ability of a particular group to practice its religion is not relevant to the determination of constitutionality.[40]

As for the effect on the land, these sites have received little protection, as the *Lyng* case states. Thus federal agencies have not hesitated to ban American Indian tribes from holding ceremonies on federal sites, or hesitated to construct dams which flood sacred Indian sites. In a curious triumph of the secular over the religious, sometimes skiing areas have been allowed to be built on sacred sites.

Suggestions to preserve the religious freedom within the existing structures have been made from time to time, and it is instructive that they weave the particular features involved in a different conception of religion into the discourse. One such suggestion has been made by David Walker, who has proposed that the "centrality standard" be replaced by an "integrity standard". Courts have insisted that the issue involved be central to the religion for them to take it into account, but, with a plural religious tradition, such centrality may be difficult to establish.[41]

Martin C. Loesch offers the following suggestion:

> A framework whereby a violation of the First Amendment would be found whenever a governmental action adversely affected the ability of an individual to practice his or her religion could be usefully and constitutionally applied. The plaintiff would still initially be required to demonstrate the religious character of her belief and that if was sincerely held. If that burden is met, whether the governmental action directly targets religious believers or whether it only incidentally affects the ability of believers to practice their beliefs, the government would then have to demonstrate a compelling interest to justify the interference with free exercise rights. Many new claims would be open to free exercise balancing as a result. Courts would be required to undergo the same factual assessment that they already perform in the free speech context. This suggestion is, however, susceptible to the same criticism as is Walker's, but it avoids potential problems with the ability of the judiciary to evaluate both when the integrity of a religious practice is disturbed and Establishment Clause conflicts that might result.[42]

Given the problem that the Supreme Court continues to give more weight to the claims of the government than to that of the American Indians, various proposals have been made regarding how better to realize the religious freedom of the American Indians. The following seem especially worth noting:

1. Mary H. Smith has proposed that "Native Americans who believe that their religious freedom has been violated should steer away from the First Amendment and AIRFA [American Indian Religious Freedom Act] as a means to redress those alleged infringements. The Indians might be more successful if they argue that they are being denied equal protection of the laws with regard to the exercise of their religions."[43]

2. C. Dean Higginbotham proposes that the Fifth and Fourteenth Amendment apart, the Ninth Amendment "could be used to protect certain fundamental rights beyond those expressly listed in the Constitution."[44]
3. Sarah C. Gordon has proposed resorting to the diversity argument, which would parallel the argument undergirding the Endangered Species Act of 1973, along the following lines:

> . . . it is eminently worthwhile to preserve something of inherent value and of value to the Republic generally through the fostering of diversity. In our scale of values such preservation should take precedence over courses of action that, on their face, appear to be more immediately valuable in material terms. Hence Justice Brennan, in his eloquent dissent in *Lyng*, stressed the irony evident in a Court decision that "sacrifices a religion at least as old as the Nation itself, along with the spiritual well-being of its approximately 5,000 adherents, so that the Forest Service can build a six-mile segment of road that two lower courts found had only marginal and speculative utility, both to the Government itself and to the private lumber interests that might conceivably use it."[45]

4. Sarah B. Gordon also advances the concept of the *public forum*, as another possible avenue of redress. Thus:

> Under this concept the Supreme Court has upheld free assembly and expression in public places even though that assembly and expression might not be acceptable to a majority or a significant number of the people. This "constitutional protection of First Amendment activity that has taken place on public land 'from time immemorial,' " Gordon asserts, "naturally includes within its ambit not only speech and assembly, but also provides a useful guide for analysis of traditional Indian religions and worship, which have been observed at sacred sites for thousands of years."[46]

5. Ira C. Lupu proposes the possibility of approaching the issue through the *common law principle*, so that "Instead of viewing the problems of law and religion as divorced from the ordinary concerns of the legal system one may draw creatively on the entire Anglo-American legal tradition in service of the free exercise clause."[47] Lupu is led to propose this to avoid the problem of having to establish that a proposed governmental action would constitute a burden on his or her "exercise of religion." Lupu proposes the following rule as the argument is developed further:

> Whenever religious activity is met by intentional government action analogous to that which, if committed by a private party, would be actionable under general principle of law, a legally recognizable burden on religion is present.[48]

   Lupu finds a precedent for this in the following provision of the Statute of Virginia for Religious Freedom (which itself set the precedent for the free exercise clause): "That no man shall . . . be enforced, restrained, molested or burdened, in his body or goods, nor shall otherwise suffer on account of his religious opinions or beliefs."[49]
6. Ellen N.W. Sewell has proposed that the concept of property rights could be profitably employed in this context. If such an approach is undertaken, it will enable conflicting claims to be treated "within a single scheme. Access to sites

> can be seen as a kind of easement . . . such 'religious easements' or 'religious usufructs' could even be thought of as a kind of 'reserved right,' "[50] comparable, for instance, to water rights.

It should not be forgotten that what is problematical about the issue is the unique status land enjoys in the religious imagination of the American Indian, which may not shared by other conceptions of religion. Robert S. Michaelsen points out that the courts have not shown any inclination to recognize the unique statue of the Indians and of Indian concepts of religion, and that while some recognition of this is forthcoming in cases dealing with peyote, it is not reflected in the manner in which issues dealing with their land claims have been addressed. Some scholars have suggested taking the legal route of property use and rights as a way of addressing and redressing the situation, specially the "doctrine of easement by prescription" and "the ancient English Common Law formula of use continuing for so long that 'the memory of man runneth not to the contrary'." That there is unease at this impasse even within legal circles is clear from the dissenting note of Justice Brennan in the *Lyng* case, but one is still looking for a "legal approach that might break the wall of court resistance."[51]

IV

One important theoretical point, which emerges from the preceding discussion in the context of religious freedom, is the issue of individual and group rights and the question of possible tension between the two. The discourse on religious freedom basically operates from within a framework of *individual* rights. It is even been argued that should a group claim religious protection, the outcome should involve a consideration of whether the group allows its members to exercise their individual rights freely.

Religious freedom, as it is now understood, is thus essentially understood in terms of the individual. But our examination of American Indian religions establishes the possibilities of claims being made for religious freedom by a group, as by American Indians as a tribe, for a piece of land. Asian religions also alert us to this possibility. The caste system in Hinduism provides an early example of it, which if quaint is also relevant. The case, as described by John B. Carman was cited earlier but here a different dimension of the case is involved.

The case pertains to a complaint made to the British magistrate by a group of Brahmins in the city of Tirunelveli in South India, after the outcastes who used to pull the car, in which the temple-deity was taken around, refused to do so anymore as a result of having converted to Christianity. This act of theirs, according to the Brahmins, had put the festival in jeopardy, whose non-performance could have unforseen negative consequences.[52]

The disposal of this case is also not without interest and relevance for our present inquiry:

> The British magistrate declined to act on that complaint, but it was not because British law in India paid no attention to Hindu notions of law, including moral and religious duties. Indeed, the British went to a great deal of trouble to seek out manuals of traditional law, both Hindu and Islamic, in some cases to translate them into English and in a great many cases to adjust British law to the Indians' own sense of what was fair and just. In this case, however, the magistrate also felt an obligation to the outcastes, who by becoming Christians had assumed new religious duties, including what might be called the negative duty of *not* participating in Hindu festivals. What that magistrate was doing, whether he realized it or not, was interpreting *dharma* as a self-imposed obligation by morally free agents aware of and responsible for their own choices. It may well have been impossible for any British magistrate in the nineteenth century, anywhere in the world, to do otherwise. Yet this was a profound change from the traditional notion of *dharma* as a differentiated duty built into the very nature with which a particular group of beings is born and related to a vast system of natural duties embracing all classes of beings in the world. Failure to live according to one's own caste *dharma* would not only produce bad karma that would affect one's station in life in a future birth; it would also upset the present order of nature, leading to floods, or in South India still more frequently, to droughts.[53]

Two points in this case deserve our attention: (1) the tension between the individual rights of the members of the group, and the claim made on them as a group by another group; (2) its resolution in favour of the individual rights of the members of the group.

Religion is typically dealt with in human rights discourse as a matter of individual choice and this does represent an extension of religious freedom if in an earlier situation, now superseded, one was forced to belong to the religion one was born in. It is not inconceivable however that the exercise of the freedom of religion may involve the issue of group rights. In the *Lyng v. Northwest Indian Cemetery Protection Association* case, the forest service wanted to harvest timber and construct a road through the Blue Creek area. But the Turok, Karok, and Tolowa Indians challenged its action. Thus here we have a case of group rights. Article 18 of the U.N. Declaration provides that the religious freedom be exercised individually or jointly, but how are cases be addressed when *joint exercise* is insisted on, and when this joint right seems to conflict with other rights: with individual rights, or the rights of others.

These are, however, theoretical considerations but the case of American Indians provides an illustration of how the exclusion of group rights from the picture actually compromises religious freedom. We noted earlier how "some courts have acknowledged the unique status of Indian religious practices with a history antedating the advent of Europeans—such as the religious use of peyote—and have granted what might be regarded as a special privilege to that status."[54] This attitude, however, is not extended to the land claims of the American Indians and this seems to be rooted in not merely a concept of religion which differs from the regnant one and treats land in a special way but also in the way group rights tend to be ignored compared to individual rights in the discourse on the subject. Robert S. Michaelsen points out that, unlike the case of peyote,

> [T]he courts have not acknowledged the unique status of Indians in dealing with sacred site claims. Indeed, they have summarily dismissed any appeal to the notion of a governmental fiduciary responsibility toward American Indian religious traditions. To deny such a

> responsibility, and to treat Indian free exercise claims in the same way as non-Indian claims may actually disadvantage the Indian claimants. Civil rights notions and litigation are generally based on universalistic and egalitarian principles that allow no place for group status, or, in the case of Indians, tribal status and the rights that Indian law has accorded that status.[55]

Michaelsen then proceeds to concur with Ellen M.W. Sewell on how the situation might be remedied:

> If Indian religious practices, and especially those having to do with land, are treated with the "respect" accorded religious practices generally in accordance with those principles, and if the First Amendment is, as Sewell puts it, "applied relentlessly, without regard for the special status and traditional rights of tribes, the perverse result will be greater limitation of Indian exercise of religion than previously existed." But if the dual legal status of American Indians "is appreciated," she continues, if "application of universalistic principles is accompanied by acknowledgment of the corporate-like status of tribes, with its attendant particularistic rights or privileges, many of the constitutional problems vanish. "For example", Indian tribes' particularistic usages on federal lands can be recognized and legally sanctioned . . . without threatening the general principle of the ownership control of property because rights accorded to tribes do not necessarily create general precedents for religious rights in property".[56]

V

References have been made to peyote at various points in the foregoing discussion. The debate surrounding it also needs to be taken into account in examining how the concept of religious freedom is problematized, when applied to people with a different concept of religion than those who frame the law to provide it. The matter could be pursued that the federal, the state and the local level, when the word local is used to refer to the reservations.

The discussion at the federal level can be bifurcated into the role peyote plays in relation to federal administration and in relation to federal legislation.[57] The Commissioner on Indian Affairs was advised by the Secretary of the Interior in 1883 to make the possession of "any intoxicants" a punishable offense which set the pattern for several provisions until, in 1934, an order of the Commissioner of Indian Affairs, entitled, "Indian Religious Freedom and Indian Culture" was promulgated, according to which "no interference with Indian religious life or ceremonial expression will hereafter be tolerated."[58] Cases mounted earlier under the impression that peyote was outlawed by liquor prohibition fell through.[59]

At the legislative, as distinguished from the administrative level, "twelve different bills were introduced into Congress to prohibit the use of peyote in the United States"[60] from 1916 to 1963, but none of them succeeded.

At the state level, the situation was mixed. Statute law against peyote was enacted in Oklahoma in 1899 though no arrests were made until 1907, but the same year, Comanche chief Quanah Parker and ten other Indian leaders testified against anti-peyote legislation pending in the Congress, and as a result not only was no anti-peyote legislation enacted, the existing statute law was also overturned. Attempts to enact laws prohibiting peyote have failed so far. Other states however did enact such laws but

> In spite of the enactment of anti-peyote laws by fifteen state legislatures in the western states where most Indians lived, very few Peyotists were brought to trial under the laws. One reason few arrests were made to enforce the laws was the recognized fact that the state laws had no force on Indian reservations or upon Indian allotments. Another reason was the recognition by attorneys that laws might be unconstitutionally interfering with religious freedom.
>
> Because Peyotism had been recognized as a bona fide religion by the Oklahoma legislature in 1908 following the testimony of the several Peyotist tribal chiefs and headmen and because the issue of religious freedom appeared to have restrained the U.S. Congress from passing laws against peyote, state laws were seldom enforced.[61]

An important development was the incorporation of the Native American Church in 1918 which uses peyote as a part of its ritual. The attempts to make sacramental use of peyote ran into narcotics laws in several states, as is obvious from the following extract from a decision of the California Supreme Court:

> We know that some will urge that it is more important to subserve the rigorous enforcement of the narcotics laws than to carve out of them an exception for a few believers in a strange faith. They will say that the exception may produce problems of enforcement and that the dictate of the state must overcome the beliefs of a minority of Indians. But the problems of enforcement here do not inherently differ from those of other situations which call for the detection of fraud. On the other hand, the right to free religious expression embodies a precious heritage of our history. In a mass society, which presses at every point toward conformity, the protection of a self-expression, however unique, of the individual and the group becomes ever more important. The varying currents of the subcultures that flow into the mainstream of our national life give it depth and beauty. We preserve a greater value than an ancient tradition when we protect the rights of the Indians who honestly practiced an old tradition in using peyote.[62]

Locally, some Indian tribal governments have enacted anti-peyote ordinances. The current situation overall may be summarized in the following words: “The bills passed by the U.S. Congress since 1965, together entitled the Drug Abuse Control Acts, list peyote along with other psychedelic drugs, but regulations for control published in the Federal Register have specified that peyote could be used in Indian religious ceremonies. Most states have adjusted their laws to comply, so that the use of peyote at the time of AIRFA’s passage in 1978 was legal for use as a sacrament in the Peyote religion almost everywhere in the United States.”[63]

Law at the state level, however, continues to complicate the picture. For instance, the American Indian Religious Freedom Act (AIRFA) has not secured the religious freedom of the Native Americans in Oregon, where no sacramental exemption of peyote exists and its use continues to be a felony, with the result that two Indians lost their jobs with a private drug and alcohol abuse treatment agency, which prohibited employees from using “controlled substances”. The story does not stop here. They were also denied unemployment insurance benefits by the Oregon Employment Division because the men were drug users. This decision was upheld by the U.S. Supreme Court in 1990, in a 6-3 division in *Employment Division v. Smith*. Justice Antonin Scalia wrote in the majority opinion that peyote’s sacramental character could not come in the way of “neutral” laws passed by the state against “criminal activities”.

VI

The American Indian case helps to indicate the problem with the prevailing concept of religion, and the attendant concept of religious freedom in yet another way. We have seen how the pluralism of the American Indian tribal traditions, their relationship to land, the phenomenon of group rights associated with them, and their use of peyote—all serve to problematize the concepts of religion and of religious freedom as we know them. Yet another way the issue of religious freedom gets problematized turns on the question of skeletal remains. Walter R. Echo-Hawk and Roger C. Echo-Hawk explain:

> In recent years this reality has dominated relations between Indian communities and federal agencies, museum, and many other institutions—particularly with regard to the treatment of Indian dead. When non-Indian institutions possess Indian sacred objects and living gods and when they control the disposition of the dead, they become little more than quasi-church facilities imposed upon Indian communities, regulating the "free" exercise of religion for dispossessed Indian worshipers. First Amendment religious freedoms are clearly controlled from the pulpit of science when museums elevate scientific curiosity over Indian religious belief in the treatment of the dead. Should Indians protest, some scientists are quick to raise the specter of research censorship, comparing such protesters to "book-burners" and referring to Indian plans for the disposition of their deceased ancestors as the "destruction of data." The inner sanctums of many museums and institutions throughout the United States have been troubled places in recent years, as administrators have struggled with the fact that—all predictions to the contrary—Indians have not died out, and now there is the problem of explaining to living Indians how so many tribal ancestors ended up as scientific and commercial "property."[64]

Such property typically belongs to museums in the present context.

As the Indian lands were taken over by the American government and the tribes relocated on shrinking territory, it became possible to dig up the graves thus left behind or acquire the artifacts thus abandoned. The word plunder is a harsh one, but it has been used in this context.[65] In any case, even the federal task force, which drafted Section 2 of the American Religious Freedom Act of 1978, was constrained to observe:

> Museum records show that some sacred objects were sold by their original Native owner or owners. In many instances, however, the chain of title does not lead to the original owners. Some religious property left original ownership during military confrontations, was included in the spoils of war and eventually fell to the control of museums. Also in times past, sacred objects were lost by Native owners as a result of less violent pressures exerted by federally sponsored missionaries and Indian agents.
>
> Most sacred objects were stolen from their original owners. In other cases, religious property was converted and sold by Native people who did not have ownership or title to the sacred object.
>
> Today in many parts of the country, it is common for "pothunters" to enter Indian and public lands for the purpose of illegally expropriating sacred objects. Interstate trafficking in and exporting of such property flourishes, with some of these sacred objects eventually entering into the possession of museums.[66]

What questions of freedom could this issue raise? Walter R. and Roger C. Echo-Hawk raise the point the exhumed dead need to be reburied and this raises two freedom of religion issues. The first is the denial of equal protection because

> Systematic disturbances of non-Indian graves, on one hand, are abhorred and avoided at all costs, while Indian people are actively searched out, dug up, and placed in museum storage. Criminal statutes in all fifty states very strictly prohibit grave desecration, grave robbing, and mutilation of the dead—yet they are not applied to protect Indian dead. Instead, the laws and social policy, to the extent that they affect Native dead, do not treat this class of decedents as human, but rather define them as "non-renewable archaeological resources" to be treated like dinosaurs or snails, "federal property" to be used as chattels in the academic marketplace, "pathological specimens" to be studied by those interested in racial biology, or simple "trophies or booty" to enrich private collectors.[67]

This breach is all the more significant because Christianity also practices burial, so this breach of religious freedom may have to be traced to factors other than difference of religion. Even the second freedom of religion issue raised by the phenomenon is not without a Christian resonance. It pertains to the fact that

> the refusal of agencies or institutions to allow tribes to bury their desecrated dead undermines basic religious freedom rights of living Native Americans. Native religious beliefs regarding the sanctity of the dead are not idiosyncratic beliefs peculiar only to American tribal peoples. On the contrary, humans have *always* treated their dead with reverence, religion, and respect. These are universal values that have been held by all societies in all ages, including the United States, where the sanctity of the dead is firmly ingrained in the common law and statutes of all fifty states.[68]

The issues involved here become clearer when the specific case of the Pawnee tribe is examined. The land held by the Pawnees was sharply curtailed between 1833 and 1857 and they were reduced to one small reservation in Nebraska. In the mid-1870s, the "federal government moved the entire tribe 400 miles south to its present reservation in Oklahoma. One consequence of this 'trail of tears,' of course, was that the Pawnees were forced to leave behind tribal cemeteries filled with their deceased relatives and ancestors."[69] Pawnee funerals are conducted by priests, and the dead are buried by proper ritual. The site continues to be visited ceremonially in the years that follow and catastrophies follow if the grave offerings are not properly positioned. Walter R. and Roger C. Echo-Hawk note that

> Human bodies are regarded as holy remains to be interred with dignity in a permanent resting place. Associated grave offerings are sanctified as the spiritual possessions of the dead. The total assemblage of elements associated with Pawnee burials is closely related to the spiritual condition of the deceased; the strong proscriptions serve to protect the grave from future disturbance. In short, burials among the Pawnee represent the outcome of highly religious (and emotional) events in the life of the community.[70]

Scholars have documented the massive desecration of the Pawnee graves once they were forced off the land. Moreover, "between 1920 and 1950 hundreds of Pawnee bodies were disinterred by archaeologists for scientific study—all without the knowledge or approval of the Pawnee tribe."[71] One particular example is worth noting:

> Near Salina, Kansas, during the 1930s, the remains of Pawnee tribal ancestors were exposed in their graves and placed on public display for commercial profit by a farmer and a police sergeant, who later acknowledged the "scientific help" of A.T. Hill of the Nebraska State Historical Society and Waldo Wedel of the Smithsonian Institution. This business enterprise took advantage of tourist traffic on the nearby interstate and served for over fifty years as Salina's primary "tourist attraction"—one that featured the public viewing of open graves for a "modest fee." Few cities can lay claim to such a distinction.[72]

Pawnee tribal leaders however became aware in the mid-1980s that the bodies on display at the "Salina Indian Burial Pit" were those of their Pawnee ancestors and "called for the closure of this 'tourist attraction' and joined in efforts to devise legislation that would shut down the 'Burial Pit' as a commercial enterprise and offer protection for unmarked graves in Kansas,"[73] an effort in which they were helped by the Kansas State Historical Society. The efforts however "foundered on the issue of compensation for the operator-owners of the Indian cemetery near Salina"[74] (and not on that of compensation to the Pawnees!). After prolonged struggle on several fronts, finally, in 1989, after what is known as the "Treaty of Smoky Hill" with all concerned parties, the Pawnee, Arikara, and Wichita tribes were able to reclaim 146 exposed human remains from the burial pit. These efforts also led to what is known as the Smithsonian Agreement which requires "the return of human remains and funerary objects to tribes where a cultural affiliation is shown to exist by the preponderance of available evidence."[75]

The very fact that the Pawnee tribe engaged in such a prolonged struggle tells us something about the extent to which the treatment of the dead is a part of their religion and therefore of their concept of religious freedom, for

> the Pawnee struggle for repatriation was motivated by the adverse impact of his disparate racial treatment upon longstanding tribal religious traditions, which require that Pawnee dead be respected and properly laid to rest. The unfolding facts of this history were met with shock and outrage among the Pawnee people. The spiritual implications of such vast disturbances of the dead required that the government of the Pawnee Tribe take immediate action. As such, the case study reveals the deep impact that grave desecration and body snatching can have upon living communities of American Indians and their religious beliefs and mortuary traditions.[76]

Three important points seem to emerge from the above case study pertaining to religious freedom. The first is that even when some items in two different religious worlds seem to be similar, their implication for religious freedom may turn out to be slightly different. Although it has been rightly noted that the sentiment to respect the dead is universal, one also needs to consider the relationship between the dead and the living in a particular religion. Whereas Christianity also buries the dead and would not desecrate the dead, the fact that the Pawnee would insist on repatriation suggests something beyond this. Apparently,

> Indian religious obligations, such as those embraced by Pawnee mortuary traditions, often exist between living Indians and the spirits of deceased ancestors. This relationship imposes a duty upon the living to bury the dead properly and to ensure that the spirits and sanctity of the dead are not disturbed. Such religiously motivated conduct is readily understandable, because death and burial have always been deeply held religious matters for all peoples. As

> one commentator notes, "[No] system of jurisprudence permits exhumation for less than what are considered weighty, and sometimes compelling reasons."[77]

From this it follows that:

> Thus, denial of sepulcher to deceased Indians, when done by the state acting through its museums, agencies, or other public institutions, directly burdens the free exercise of Indian religion by preventing Native people from burying their dead. Government interference with Native religion through the withholding of the dead infringes upon fundamental beliefs and practices of the universal type mentioned above.[78]

The second point is related to the first, and consists of the fact that "the courts have *not* been called upon to decide whether the withholding of the dead by the state violates the First Amendment rights of kin to bury the deceased in accordance with their religious beliefs."[79] An intriguing possibility arises in this context as a result of *Fuller v. Marx*. The case was brought by a widow against a doctor who refused to return certain organs of the deceased husband. The case went against her on the ground that she could have done so by following the proper procedure, but in giving its judgement, the court did not question her "First Amendment right to bury her husband in a manner consistent with her religious beliefs."[80]

The third point follows from the second, specially when one takes the case just referred to into account. For if it could be established by the Indian tribes that the denial of the sepulcher impaired their religious practices, then the burden of proof will shift to the state, which will now have to demonstrate a compelling interest, and one which cannot be served in a manner less constrictive of religious liberty. As a matter of fact

> in regard to the state's burden of proof under the test, the Nebraska attorney general issued an opinion in 1988 upholding the Pawnee religious rights involved in that case and stated in part: "I am not convinced that scientific curiosity, or the possibility that future scientific advances will permit further study of the remains, are sufficient reasons to overcome the strong impulses in the law to allow human remains to rest in peace in a grave or other proper sepulcher."[81]

VII

The case of the primal religions, and specially of the American Indians in relation to the American government, problematizes the issue of religious freedom by highlighting the fact that if the concept of religion, and consequently of religious freedom, seems to be such as does not fit squarely in the regnant notion of religion and religious freedom, then, despite the best of intentions, the religious freedom of those whose notion of religion differs from the regnant notion, may be seriously compromised.

Notes

1. See Sharma (2006), Introduction.
2. Smith (1991, Chap. IX).
3. Ibid., p. 365.
4. Ibid., p. xiii.
5. Ibid.
6. Ibid., p. 368.
7. Ibid., p. 366.
8. Hultzkrantz (1979, p. 9).
9. Ibid.
10. Loesch (1996, p. 66).
11. Ibid.
12. Ibid., pp. 66–67. The details of the Smith case, referred to in the passage, are as follows: "Alfred L. Smith and Galen W. Back, drug counsellors with the Douglas County (Oregon) Council on Alcohol and Drug Abuse Prevention and Treatment (ADAPT) were fired because they ingested peyote while off duty during a ceremony of the Native American Church. They were subsequently denied unemployment compensation for the same reason. On appeal, the Oregon Supreme Court held that this denial violated their free exercise of religious rights (*Smith* and *Black* 1986). The state of Oregon appealed to the U.S. Supreme Court, which remanded to the Oregon Supreme Court for determination whether the possession and use of peyote violated Oregon law, without exception. The Oregon court found that the Oregon statute on controlled substances provides no exception for the possession and use of peyote under any circumstances. However, that court found further that the "outright prohibition of good-faith religious use of peyote by adult members of the Native American Church would violate the First Amendment directly as interpreted by Congress" (*Smith* 1988). AIRFA was appealed to by the Oregon Supreme Court in support of this conclusion. In the language of the act and in the reference to peyote in the accompanying House report on AIRFA (as well as in the congressional expression of intention in 1965, when peyote was included under the Drug Abuse Control statutes, that "it expected the implementing regulations to exempt the religious use of peyote") Congress has clearly indicated its intention to afford good-faith American Indian religious practices protection (*Smith* 1988, p. 149). The U.S. Supreme Court did not reach a similar conclusion and thus dashed the hopes of many Indians who hoped to witness a positive effect of AIRFA in the high court." (Michaelsen 1991, pp. 121–22). For more details see Long (2000).
13. Loesch, op. cit., p. 67. The details of the Lyng case are as follows: "The towns of Gasquet and Orleans are approximately 60 miles apart in the northwest corner of California, 20 miles from the Pacific Ocean and 30 miles south of the Oregon border. Between them lies the Six Rivers National Forest. The Forest Service first planned to link these towns in the late 1940s. A standard jeep road was constructed in the mid-1960s and was paved in parts over the next 20 years. The primary purpose of the road was to facilitate logging efforts in the area, though it also helped in forest fire protection and provided increased recreational access to the area. In 1972, the Forest Service began preparing a multiple-use management plan for a 67,500 acre area known as the Blue Creek Unit of the Six Rivers National Forest. The plan called for the harvesting of 733,000,000 board feet of timber over an 80 year period, the paving of the remaining 6 mile segment of the road between Gasquet and Orleans (the G-O road), and the construction of an additional 200 miles of logging roads. The Blue Creek Unit Plan, adopted in 1976, was the origin of the dispute which arose between the Yurok, Karok, and Tolowa Indians and the Forest Service.

    These tribes call the area known to the United States government as the Blue Creek area, the High Country. For at least 200 years, and possibly longer, they have gone to the High Country for religious purposes. Though these three communities have somewhat different religious beliefs, they all share some common beliefs and practices. The High Country, they

believe, is where the prehuman spirits went when human beings arrived on earth. These spirits are a source of religious power and medicine. Through interaction with the spirits of these places, individual practitioners attain spiritual and curative power which is shared with other members of their community. The communities at large depend on the spirits of the High Country to prepare their tribal leaders for ceremonies and to provide them with healing power. These tribes also believe that their religious practices have important "World Renewal" functions as well. The welfare of the tribe and indeed all humanity depend on the ability of individual practitioners to communicate with the spirits of the High Country.

Of special importance in the Blue Creek area are rock outcroppings called Chimney Rock, Doctor Rock, and Peak 8. The importance of these peaks has grown as others have been developed or desecrated. These sites themselves are believed to be sacred, as they provide the environment where spiritual rituals may take place. The qualities of "silence, the aesthetic perspective, and the physical attributes, are an extension of the sacredness of [each] particular site." The pristine, undisturbed natural environment, privacy and silence that have characterized the High Country, and especially these particular peaks, for the preceding centuries are essential for spiritual use of the area. The G-O Road plan called for construction within a mile of these sacred areas.

After administrative remedies failed, the plaintiff Indians and the State of California sought a preliminary injunction against the Forest Service to prevent, among other things, the construction of the final 6 mile segment of road, known as the Chimney Rock section. Their request for injunctive relief was denied, but a trial on the merits found that the Forest Service plan violated the First Amendment of the Constitution, several federal environmental acts, and the fishing and water rights of the Hoopa Valley Indian Reservation residents and the federal government's trust responsibilities to the Hoopa Valley Indians. The district court judge permanently enjoined the Forest Service from constructing the Chimney Rock section of the G-O Road or engaging in timber harvesting until they produced a new environmental impact statement.

While appeal to the Ninth Circuit was pending, the United States Congress passed the California Wilderness Act of 1984. The Act protected most of the contested area from timber harvesting but left open a corridor for he construction of the Chimney Rock section of the G-O Road. The Ninth Circuit affirmed the district court in nearly all respects. It did, however, vacate the district court order as it applied to the federal government's trust responsibility to the Indians of the Hoopa Valley Reservation, because the trust responsibility issue could not be decided properly without the tribe being represented. It also withdrew that part of the order relating to the violation of the federal Wilderness Act that had been made moot by the passage of the California Wilderness Act. The other parts of the district court order, including the constitutional issue, were affirmed.

The Supreme Court, in a 5-3 decision, reversed the Ninth Circuit. Justice O'Connor wrote for the majority and held that the First Amendment did not prohibit the government from permitting timber harvesting and road construction in the Blue Creek/High Country area." (Loesch, ibid., pp. 58–60.)

14. Ibid.
15. Ibid.
16. Ibid., p. 65.
17. Ibid.
18. Ibid., p. 363.
19. Ibid.
20. Smith, op. cit., p. 371.
21. Loesch, op. cit., p. 70.
22. Ibid.
23. Ibid., p. 40.
24. Deloria (1992, p. 303).
25. Ibid.

26. Inouye (1996, p. 13).
27. Ibid., pp. 13–14.
28. Ibid., p. 14.
29. See Rollings (2002, pp. 121–38). Also see Jennings (1975).
30. Inouye, op. cit., pp. 13–14.
31. Deloria, Jr. op. cit., p. 305.
32. Ibid.
33. Cited, ibid.
34. Cited, ibid., p. 305.
35. Ibid.
36. Loesch, op. cit., p. 41.
37. Ibid., p. 43, *emphasis added*. “The opponents of tribal religions have gone so far as to suggest that the resolution [American Indian Religious Freedom Resolution, 1978] *establishes* tribal prohibition in this respect. Insofar as Indians have constitutionally protected rights to practice their religion, they remain outside the constitution”, Deloria, Jr, op. cit., p. 306.
38. Loesch, op. cit., p. 43.
39. Ibid., p. 62.
40. Ibid., p. 61.
41. Loesch, op. cit., p. 72.
42. Ibid.
43. Cited in Michaelsen (1991, p. 125).
44. Cited, ibid.
45. Ibid., pp. 125–26.
46. Ibid., p. 126.
47. Cited, ibid.
48. Cited, ibid.
49. Cited, ibid.
50. Cited, ibid.
51. Ibid., pp. 128–29.
52. Carman (1988, pp. 111–13).
53. Ibid., pp. 115–16.
54. Michaelsen, op. cit., p. 129.
55. Ibid., pp. 129–30.
56. Ibid., p. 130.
57. See Stewart (1991, p. 44).
58. Cited, ibid., p. 45.
59. Ibid., p. 46.
60. Ibid., p. 47.
61. Ibid., p. 48.
62. Cited, ibid., pp. 50–51.
63. Ibid., p. 58.
64. Walter R. Echo-Hawk and Roger C. Echo-Hawk (1991, p. 64).
65. Ibid., p. 65.
66. Cited, ibid., p. 66.
67. Ibid., p. 68.
68. Ibid.
69. Ibid., p. 69.
70. Ibid., p. 71.
71. Ibid., p. 73.
72. Ibid.
73. Ibid.
74. Ibid.
75. Ibid., p. 77.

76. Ibid., pp. 77–78.
77. Ibid., p. 78.
78. Ibid.
79. Ibid.
80. Cited, ibid., p. 79.
81. Ibid.

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Chapter 14
Conclusion

For a book this long the conclusion should be brief. If I have not been able to carry conviction up to this point, then I am not likely to achieve it now.

Theoretical Conclusions

The purpose of this book was to demonstrate two major theses: (1) that the concept of religious freedom cannot be divorced from the concept of religion, and (2) that Western and Asian concepts of religion generate somewhat different concepts of religious freedom.

A Western concept of religion, which is assumed by current human rights discourse, generates a particular concept of religious freedom, tied to a concept of religion which involves exclusive religious identity, and represents the perspective of the proselytizing religions; whereas an Asian concept of religion, which is neglected in current human rights discourse, generates another concept of religious freedom by being open to the possibility of multiple religious identities, and represents the perspective of the non-proselytizing religions.

These two concepts of religious freedom, generated respectively by the Western and Asian concepts of religion, converge in some respects and diverge in other respects.

They converge inasmuch as both the concepts of religious freedom acknowledge the freedom of the individual to choose and to manifest one's religion. They diverge on the point whether the right to manifest one's religion confers the right to proselytize or not.

This divergence can be accommodated in current human rights discourse by *recognizing a fact in relation to conversion which has hitherto not been recognized in that discourse*, namely, that there is a distinction to drawn between (1) my right to change my religion and (2) somebody else's right to ask me to change my religion.[1] The two are *not* symmetrical. My right to change my religion is virtually unconditional but someone else's right to ask me to change my religion involves a clash of two rights: my right to non-interference in the pursuit of my religion, and the other person's right to manifest his or her religion in a way which involves asking me, or

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amounts to asking me, to change my religion. The second right to convert cannot be considered as unencumbered as the first one.

Once this distinction is recognized it becomes clear that both concepts of religious freedom accept the *first conception* of "conversion" but diverge on the other, if it is accepted that my right to change my religions equally implies my right to retain my religion, and not just change it. The Asian concept of religious freedom may also prefer the word "choose" to "change", as it accepts the possibility of multiple religious identity, but this need not be a sticking point.

The *second conception* of conversion is a sticking point, which must be squarely faced. The resolution of this difference seems to lie in the acknowledgment that the proselytizing and non-proselytizing religions cannot be treated on par in this respect, as the Western concept of religious freedom leaves the non-proselytizing religions at a disadvantage in relation to the proselytizing religion. Therefore *followers of proselytized religion are justified in imposing restrictions on the proselytizing activities of the proselytizing religions, in order to prevent the violation of the principle of non-interference in the pursuit of one's religion*. The actual restrictions involved would vary from case to case, and should be open to adjudication.

The issue in fact will have to be constantly negotiated. It will have to be *negotiated* because when it comes to the manifestation of one's religion, a fundamental asymmetry is involved. For the proselytizing religions such freedom involves freedom *to* convert, for the non-proselytizing religions such freedom involves freedom *from* conversion. It the two positions are simultaneously present in a situation, then it places the followers of the non-proselytizing religions at a built-in disadvantage in relation to the proselytizing religions. The non-proselytizing religions do not put the proselytizing religion under the threat of conversion. Particularlism only patrols its own borders. But the proselytizing religions put the non-proselytizing religions under the threat of conversion. One could say that while particularlism only patrols its own borders, universalism is forever seeking to extend its frontiers. It is an inherently unstable situation, which has to be stabilized through negotiation. But the situation has to be *constantly* negotiated for two opposite reasons: one natural and the other historical. The right to be left alone in terms of one's religion, and the right to want to share it with others, are two fundamental if contrary orientations of human nature and one may not be used to trump the other. That is why the issue has to be, in principle, open to negotiation all the time. But it has also to be kept open for negotiation because times change, and the balance of power among religions shifts with time. It may be true that "powerful societies are universalistic"[2] but who is strong and who is weak can vary with time. Adjustment between them therefore requires constant negotiation.

Empirical Conclusions

Rights discourse on religious freedom has not always succeeded in protecting the rights of religious communities infused by a different concept of religion, as illustrated by the case of the Native Americans. This empirical conclusion supports

the theoretical conclusions drawn above. It also emerges that while human rights discourse, at the theoretical level, seems to acknowledge the religious rights of communities in principle, in practice it has tended to neglect them in favour of the individual.[3] This could reflect the impact of a secular trend towards individual rights on the practice of religious freedom, but must be monitored if it is used to disrupt the integrity of religious communities to make them vulnerable to proselytization by the proselytizing religions.

The affirmation of religious freedom is a dynamic process and therefore will have to be constantly negotiated but the key conclusion the book has to offer at the present juncture is that Western human rights discourse has yet to fully accept the fundamental right of someone *not* to be made an object of proselytization (in the process of manifesting one's religion by someone) as a fundamental religious freedom. It is true that when change is necessary, it is necessary to change; it is equally true that if it is not necessary to change, it is necessary not to change.

Notes

1. This distinction was first proposed by the late Professor John D. Montgomery of Harvard University.
2. Huntington (1996, p.109).
3. Buckingham (2007, pp. 251–81), Esau (2008, pp. 110–39). I am indebted to Professor Daniel Cere for these references.

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